

Atassi v Philipp Plein Ams., Inc.
2022 NY Slip Op 31175(U)
April 6, 2022
Supreme Court, New York County
Docket Number: Index No. 653776/2019
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

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TALAL ATASSI a/k/a ASAP STAFFING LLC, ASAP
STAFFING LLC,

Plaintiff,

- v -

PHILIPP PLEIN AMERICAS, INC.,

Defendant.

-----X

INDEX NO. 653776/2019

MOTION DATE 12/06/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing documents, it is hereby ordered that plaintiffs' motion for summary judgment is denied, based on the following memorandum decision.

Background

In this breach of contract action, plaintiffs Talal Atassi ("Atassi") and ASAP Staffing LLC ("ASAP Staffing" and collectively "plaintiffs") assert three causes of action against defendant Philipp Plein Americas, Inc.: breach of contract (first cause of action), violation of the Administrative Code provisions known as the Freelance Isn't Free Act ("FIFA"), Administrative Code of the City of New York §§ 20-927, *et seq.* (second cause of action), and quantum meruit/promissory estoppel (third cause of action). Plaintiffs now seek summary judgment on the complaint. As an initial matter, plaintiffs failed to make any arguments in support of summary judgment on their third cause of action, and as such that branch of their motion seeking that relief is denied.

Plaintiff Atassi, as CEO of ASAP Staffing Services LLC, and nonparty Amro Alsoleibi (“Alsoleibi”), defendant’s former regional brand manager, entered into a contract pursuant to which ASAP Staffing was to provide recruitment services to defendant (NYSCEF Doc. No. 7, Exhibit 1). The contract provides that the “Client,” purportedly defendant, is defined as “any authorized person, firm or corporate body” (*id.*, ¶ 1). For each potential hire brought to defendant by plaintiffs, defendant would pay plaintiff 20% of that person’s annual salary (*id.*, ¶ 3). Additionally, upon adequate notice and provided defendant was current on its payments to plaintiffs, plaintiffs agreed to locate a replacement candidate at no additional cost (*id.*, ¶ 5). While plaintiffs agreed to use “reasonable endeavors to ensure the suitability of the Candidate,” they did not give any warranty, either express or implied, “as to the suitability of the Candidate for the purposes of the Client or as to the accuracy of any references supplied or qualification of the Candidate” (*id.*, ¶ 6.1). Atassi asserts that the contract took effect in November 2018, and pursuant to the contract he found and placed ten candidates with defendant (NYSCEF Doc. No. 7, ¶ 5). He states that the total compensation owed is \$97,568, which defendant has refused to pay (*id.*, ¶¶ 8-9).

Defendant, in response, claims that the contract is invalid because Alsoleibi never had the authority to bind defendant to it. During Atassi’s deposition, he stated that he had never discussed his recruitment business with anyone at defendant other than Alsoleibi, and made no independent effort to verify Alsoleibi’s authority to bind the company prior to entering into the agreement (NYSCEF Doc. No. 25 at 33:8-24, 34:18-35:17). Defendant further asserts that no one at defendant other than Alsoleibi was aware of the contract, in part because Alsoleibi went to great lengths to conceal Atassi’s part in recruitment for defendant (NYSCEF Doc. No. 12, ¶¶ 9, 17-21; NYSCEF Doc. Nos. 17-19). On January 25, 2019, Alsoleibi revealed Atassi’s existence to

defendant by copying him on an email involving defendant's new head of recruiting (NYSCEF Doc. No. 12, ¶¶ 22-23; NYSCEF Doc. No. 20). Six days later, defendant terminated Alsoleibi for purporting to enter into the contract on defendant's behalf "without the authority or authorization to do so (NYSCEF Doc. No. 21).

Plaintiffs commenced the instant action by filing the summons and complaint on June 28, 2019 (NYSCEF Doc. No. 1). Defendant appeared and answered the complaint (NYSCEF Doc. No. 2). Plaintiffs now make the instant motion for summary judgment.

Standard of Review

Summary judgment is appropriate where there are no disputed material facts (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The moving party must tender sufficient evidentiary proof to warrant judgment as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). The opposing party must proffer its own evidence to show disputed material facts requiring a trial (*id.*). However, the reviewing court should accept the opposing party's evidence as true (*Hotopp Assoc. v Victoria's Secret Stores*, 256 AD2d 285, 286-287 [1st Dept 1998]), and give the opposing party the benefit of all reasonable inferences (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]).

Discussion

The primary issue relating to the parties' contract is whether Alsoleibi, as a manager of defendant, had the authority to bind defendant to the contract. Plaintiffs assert in their moving paper, without any supporting evidence, that Alsoleibi had authority to bind defendant. Defendant, in turn, argues that he had no such authority, and offers Alsoleibi's termination letter, which states that he was fired because he purported to bind defendant without the authority to do so (NYSCEF Doc. No. 21). In reply, plaintiff belatedly offers another recruiting contract that

Alsoleibi signed on behalf of defendant shortly before the contract at issue herein, apparently without objection from defendant (NYSCEF Doc. No. 30). Plaintiffs also argue that defendants are bound by their failure to respond to a notice to admit served pursuant to CPLR 3123, in which plaintiffs demanded that defendant admit or deny Alsoleibi's authority to enter into the contract (NYSCEF Doc. No. 8). As an initial matter, Alsoleibi's authority or lack thereof "goes to the heart of the matters at issue" in this case and is therefore an "improper" subject for a notice to admit (*Altman v Kelly*, 128 AD3d 741, 742 [2d Dept 2015]).

"An agent's power to bind his principal is coextensive with the principal's grant of authority" (*Ford v Unity Hosp.*, 32 NY2d 464, 472 [1973]). An agent may have actual authority to act on behalf of a principal, which may be express or implied (*Site Five Hous. Dev. Fund Corp. v Estate of Bullock*, 112 AD3d 479, 480 [1st Dept 2013]). Express authority consists of a direct grant of authority from the principal to the agent (*Greene v Hellman*, 51 NY2d 197, 204 [1980]). In the absence of an express grant, authority may be implied where the principal is "responsible for any manifestations which, though indirect, would support a reasonable inference of an intent to confer such authority" (*id.*). If there has been no actual grant of authority, either express or implied, a Court may still find that there was apparent authority. Apparent authority, however, requires "proof that the third party relied upon conduct of the principal which clothed the agent with the appearance of authority" (*Chelsea Nat. Bank v Lincoln Plaza Towers Assoc.*, 93 AD2d 216, 219 [1st Dept 1983], *affd*, 61 NY2d 817 [1984]). "[A] third party with whom the agent deals may rely on an appearance of authority only to the extent that such reliance is reasonable" (*Hallock v State*, 64 NY2d 224, 231 [1984]).

"The law is well settled that to establish actual or apparent authority the facts leading to that conclusion must emanate from the principal and not from the agent. The representations,

declarations or conduct of the agent are not proof of authority” (*Brookfield Clothes, Inc. v Tandler Textiles, Inc.*, 78 AD2d 841, 841 [1st Dept 1980]). “One who deals with an agent does so at his peril, and must make the necessary effort to discover the actual scope of authority” (*Ford*, 32 NY2d 464, 472 [1973]).

Here, a triable issue of fact exists as to Alsoleibi’s authority to bind defendant, as well as to the extent that plaintiffs are now claiming that defendant impliedly ratified the contract by hiring candidates procured by plaintiffs. The record contains no evidence of any contact between defendant and Atassi until shortly before the contract was terminated and Alsoleibi was discharged. Atassi testified that he had never discussed his recruitment business with anyone at defendant other than Alsoleibi, and made no independent effort to verify Alsoleibi’s authority to bind the company prior to entering into the agreement (NYSCEF Doc. No. 25 at 33:8-24, 34:18-35:17). It was his responsibility to make such efforts (*Ford*, 32 NY2d 464, 472 [1973]). Whatever representations Alsoleibi may have made to Atassi regarding his authority are insufficient; authority derives from the acts and representations of the principal, not the agent (*Brookfield Clothes, Inc.*, 78 AD2d at 841). To the extent that the earlier recruiting contract signed by Alsoleibi signifies anything regarding Alsoleibi’s authority, the most that can be said of it at present is that Alsoleibi had authority to enter that specific contract. That contract by itself does not eliminate issues of fact regarding Alsoleibi’s authority. Indeed, defendant’s termination of Alsoleibi shortly after discovering the contract (NYSCEF Doc. No. 23) casts serious doubt on the scope of his authority, an issue that must be resolved at trial.

Nor, on the present record, can defendant be said to have ratified the contract by hiring candidates procured by Atassi; Alsoleibi concealed Atassi’s existence from defendant until shortly before he was terminated (NYSCEF Doc. No. 12, ¶¶ 9, 17-23; NYSCEF Doc. Nos. 17-

19). “[R]atification of an agent's acts requires knowledge of material facts concerning the allegedly binding transaction” (*Cologne Life Reins. Co. v Zurich Reins. (N. Am.), Inc.*, 286 AD2d 118, 128 [1st Dept 2001]). An issue of fact exists as to defendant’s knowledge of the material facts surrounding the contract, namely Atassi’s involvement in it. The above issues of fact preclude summary judgment on both the breach of contract and breach of the FIFA causes of action (*39 Coll. Point Corp. v Transpac Capital Corp.*, 12 AD3d 664, 664 [2d Dept 2004] [“the plaintiff, in opposition, raised triable issues of fact as to whether the person who purportedly executed the note on its behalf lacked the actual or apparent authority to do so”]).

Finally, plaintiffs ask for leave to amend the summons to correct a typo (CPLR 305[c]), specifically that the name of Atassi’s company should be listed as “ASAP Staffing Services LLC” rather than ASAP Staffing LLC. As ASAP Staffing Services LLC is the entity which purportedly made the contract with defendant, there is no prejudice to defendant in amending the caption as requested, and defendant does not appear to oppose this request, that relief is granted.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion for summary judgment is denied; and it is further

ORDERED that the motion of plaintiff for leave to amend the summons herein to correct a misnomer by changing the name of plaintiffs in the summons from Talal Atassi a/k/a ASAP Staffing LLC to Talal Atassi a/k/a ASAP Staffing Services LLC, and from ASAP Staffing LLC to ASAP Staffing Services LLC is granted; and it is further

ORDERED that plaintiffs shall, within 30 days from the filing hereof, serve the summons so amended upon defendant and file same with the County Clerk with proof of service; and it is further

ORDERED that plaintiffs shall, within said 30-day period, serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the Decision and Order of the court.



<u>4/6/2022</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 checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER