

Coulter v Sorenson
2022 NY Slip Op 31480(U)
May 5, 2022
Supreme Court, New York County
Docket Number: Index No. 653887/2021
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 MOTION 61EFM

Justice

ANDREA COULTER,

Plaintiff,

- v -

CARL S. SORENSON IV, individually and as Trustee of the CARL SORENSON IV REVOCABLE TRUST, WALKER 37 LLC, and NANZ CUSTOM HARDWARE, INC.,

Defendants.

Table with 2 columns: Field Name, Value. INDEX NO. 653887/2021, MOTION DATE, MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. BARRY R. OSTRAGER

Before the Court is Motion Sequence 001 by defendants to dismiss plaintiff's complaint pursuant to CPLR §3211(a)(1), (5), and (7). The Court heard oral argument on the motion on May 4, 2022, via Microsoft Teams. For the reasons reflected on the transcript of proceedings and stated herein, the motion is resolved as follows.

Plaintiff Andrea Coulter ("Coulter") entered into an intimate relationship with defendant Carl Sorenson ("Sorenson"), eighteen years her senior, in 2008 when she was twenty-five years old. Defendant Sorenson is a businessman who owns defendant Nanz Custom Hardware, LLC ("Nanz"), a substantial enterprise which manufactures and sells high-end custom-made metal hardware products used in the construction of residential and commercial properties. During the course of their decade-long relationship, plaintiff and defendant Sorenson lived together at more than one of defendant Sorenson's homes. At some point during the course of the relationship, plaintiff commenced working, allegedly without compensation, for Sorenson both as his personal assistant and at Nanz.

In or about 2013, Coulter allegedly proposed that Sorensen utilize a Tribeca co-op apartment Sorensen owned through the defendant Carl Sorenson IV Revocable Trust as a short-term rental space using the Airbnb platform. Plaintiff claims to have been responsible for fully managing the Airbnb initiative, including overseeing the apartment's renovation and decoration, servicing the apartment, as well as managing the business's account and the greeting of guests. Plaintiff alleges that the apartment was regularly rented between 2014 and 2018 and during that time allegedly generated a net income of approximately \$450,000. Cmpl't ¶22. Plaintiff alleges that the purpose of the Airbnb arrangement "was to give Coulter a way to make money so that she could build up her savings and eventually purchase an apartment of her own..." and "also was a way for Sorensen to financially compensate Coulter for all of the personal and business services that she had provided to him and his company by being available 24/7 to meet all of Sorensen's needs and requests." Cmpl't ¶13. This included helping Sorensen's children with their homework. Cmpl't. ¶10. Plaintiff alleges she was promised that all of the money generated from operating the business, which was deposited in a Chase bank account belonging to Sorensen, would be for her exclusive benefit, and that one-half of the Apartment would be gifted to her as well. The apartment was, according to the complaint, ultimately sold for \$2.5 million, one half of which plaintiff claims to be entitled. Sorensen's promises were allegedly covered by oral and written contracts between the two parties and explicated by multiple contemporaneous e-mails. The alleged Airbnb arrangement was at least partially memorialized in the Operating Agreement of defendant Walker 37 LLC, which reflected plaintiff's involvement in the Airbnb initiative.

Plaintiff asserts that Sorensen impermissibly withdrew \$357,000 from the Chase bank account in December of 2017. Thereafter, plaintiff claims she negotiated and entered into agreements addressing the repayment of the \$357,000 to the Chase bank account, all of which

Sorenson allegedly promised to return to her so that she could purchase an apartment of her own. Cmplt. ¶13, 15. Plaintiff alleges the parties memorialized the terms of certain agreements, but that Sorenson either reneged on the agreements or signed documents that failed to reflect what the parties agreed. Cmplt. ¶34. The relationship between the parties eventually broke down in September 2018.

In addition to the financial damages, plaintiff alleges she suffered physical and emotional damages at the hands of Sorenson. Plaintiff alleges that she was physically and emotionally abused by Sorenson on multiple occasions, including allegations that: on October 11, 2017, defendant Sorenson grabbed her by the neck and slammed her head into a desk (Cmplt. ¶37); on July 30, 2018, in an allegedly videotaped incident, defendant Sorenson threw a chair and a sledgehammer at plaintiff (Cmplt. ¶37). And, in August or September 2018, defendant Sorenson allegedly swung a heavy brass prototype faucet at plaintiff's head (Cmplt. ¶37). She further alleges that on September 27, 2018, defendant Sorenson threatened to throw a 35-pound urn at plaintiff and also went to grab a hunting rifle with which to threaten plaintiff, causing her to leave his home in fear for her life (Cmplt. ¶37). Following the end of the relationship, defendant allegedly had plaintiff forcibly removed from his home by the police (Cmplt. ¶36), threatened to put plaintiff in jail, made false and derogatory statements about plaintiff to others, and removed plaintiff's dog from her custody (Cmplt. ¶38). A few days after the break-up defendant Sorenson allegedly drove "6 hours with the dog 'Stella' to where Coulter was working at an event, showed her the dog, and said 'I thought you might want to see your dog one last time.'" (Cmplt. ¶97).

Under CPLR § 3211(a)(7), this Court is tasked with determining whether, after affording the pleadings a liberal construction and accepting the allegations in the Amended Complaint as true, "the facts as alleged fit within any cognizable legal theory ... Under CPLR § 3211(a)(1), a

dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” *Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (1994) (citations omitted). In resolving a pre-answer motion to dismiss based on the Statute of Limitations and/or the Statute of Frauds pursuant to CPLR § 3211(a)(5), the plaintiff’s allegations are to be treated as true, and where the plaintiff has submitted an affidavit in opposition to the motion, it must be construed in the same favorable light. *Ford v. Phillips*, 121 A.D.3d 1232, 1234–35 (3d Dept 2014).

The motion to dismiss the first cause of action for breach of contract is granted as to defendants Nanz Custom Hardware and Walker 37 LLC, and denied as to defendants Sorenson and the Carl Sorenson IV Revocable Trust. Plaintiff alleges the existence of multiple oral and written contracts entered into between herself and defendant Sorenson. There appears to have been a clear understanding that Sorenson would return \$357,000 he withdrew from the Airbnb bank account to pay his taxes as reflected in contemporaneous e-mails. Therefore, the documentary evidence does not irrefutably rebut plaintiff’s breach of contract claims. There is a question of fact as to the existence and/or validity of the various contracts alleged by plaintiff such that it would be premature at this juncture to dismiss the claim. Even the claim for half the value of the apartment survives due to the apparent existence of contemporaneous evidence reflecting that agreement, and because plaintiff has sufficiently alleged that enforcement of the statute of fraud would be unconscionable due to the manner in which Sorenson allegedly manipulated plaintiff. *See Matter of Hennel*, 29 N.Y.3d 487, 493–94 (2017). The issue of promissory estoppel/unconscionability as respects plaintiff’s claim to an ownership interest in one-half of the apartment raises a question of fact that cannot be decided at the pre-answer motion to dismiss stage. *See Castellotti v. Free*, 165 A.D.3d 535, 536 (1st Dept. 2018), *citing*

Ackerman v. Landes, 112 A.D.2d 1081 (2d Dept. 1985). This claim would otherwise be dismissed on the basis of the statute of frauds.

The motion to dismiss the second cause of action for a constructive trust is granted as to defendants Walker 37 LLC and Nanz Custom Hardware, and denied as to defendants Sorenson and the Carl Sorenson IV Revocable Trust. Plaintiff has pled the existence of a confidential and fiduciary relationship between herself and Sorenson which satisfies the elements of a claim for a constructive trust against Sorenson and the Carl Sorenson IV Revocable Trust at the pleading stage. There is no basis for this claim as against Walker 37 LLC and Nanz. The cause of action for constructive trust is not duplicative of the breach of contract claim because defendant Sorenson denies the existence and the validity of all of the contracts, plaintiff alleges. There are clearly disputed issues of fact relating to the contract claims that cannot be resolved at the pre-answer motion to dismiss stage of the case. Consequently, the alternative constructive trust claim survives at the pleading stage. *See, e.g., Renk v. Renk*, 188 A.D.3d 502 (1st Dept. 2020).

The motion to dismiss the third cause of action for unjust enrichment is similarly denied. The quasi-contract claim is pled in the alternative to the breach of contract claim and as such is not duplicative.

The motion to dismiss the fourth cause of action for conversion of the funds that were held in the Chase bank account is granted. This claim is duplicative of both the breach of contract claim and the alternative quasi-contract claims. The motion to dismiss the fifth cause of action for breach of fiduciary duty is granted for the same reason. *See An-Jung v. Rower LLC*, 173 A.D.3d 488, 488 (1st Dept. 2019). The motion to dismiss the sixth cause of action for fraud is also granted as duplicative of the surviving claims in this case. Parties may not assert a fraud claim seeking damages that are duplicative of those recoverable on a cause of action for breach

of contract. *MBIA Ins. Cor. v. Credit Suisse Sec. (USA) LLC*, 165 A.D.3d 108, 114 (1st Dept. 2018). While a claim for fraud may not be duplicative if the plaintiff pleads the misrepresentation of a “then-present fact collateral to the contract,” *GoSmile, Inc. v. Levine*, 81 A.D.3d 77, 81 (1st Dept. 2010), plaintiff has failed to do so here. The only “then-present fact” relied on by plaintiff was that defendant did not intend to comply with the promises he allegedly made at the time the parties entered into the agreements, which is a mere “misrepresentation of a future intent to perform.” *Id.* at 81.

The motion to dismiss the seventh cause of action for tortious interference with actual and prospective business relations is granted. This cause of action requires (1) an actual or prospective business relationship, (2) that defendant interfered with, (3) with a wrongful purpose, and (4) that the interference injured the relationships. Plaintiff alleges in her Complaint that Sorenson interfered with her employment at Mark Cunningham’s design firm, where plaintiff worked from 2017 up until some point shortly after the parties’ break-up in late 2018. Plaintiff concedes in her opposition to the motion that because the business relationship between herself and Mark Cunningham was at-will, that the seventh cause of action be only considered for interference with prospective business relationships. *See Snyder v. Sony Music Entertainment Inc.*, 252 A.D.2d 294 (1st Dept. 1999). However, to support a cause of action for tortious interference with prospective contractual relations, plaintiff must show “more culpable conduct on the part of defendant” and was required to assert either an independent tort or underlying crime. *Carvel Corp. v. Noonan*, 3 N.Y.3d 182, 190 (2004). Plaintiff has failed to do so. Plaintiff alleges that “Sorenson got Coulter fired from her job at Mark Cunningham’s design firm by giving Mr. Cunningham free hardware,” (Cmplt. ¶ 39) but “persuasion alone” does not amount to “wrongful means.” *See Guard-Life Corp. v. Parker Hardware Mfg. Corp.*, 50 N.Y.2d 183,

191 (1980). Defendant also offered a sworn affidavit by Mark Cunningham denying that defendant had any involvement or influence towards plaintiff's termination. NYSCEF Doc. No. 19. Plaintiff's claim also fails as to the other purported prospective business relationships because plaintiff offers no information as to those other prospective business relationships with which defendant allegedly interfered.

The motion to dismiss the eighth and ninth causes of action, for intentional infliction of emotional distress and battery/assault, respectively, is granted. It is true that New York courts "have long had the power, both in law and equity, to bar the assertion of the affirmative defense of the Statute of Limitations where it is the defendant's affirmative wrongdoing ... which produced the long delay between the accrual of the cause of action and the institution of the legal proceeding." *General Stencils, Inc. v. Chiappa*, 18 N.Y.2d 125, 128 (1966). Nevertheless, these claims arose in 2018 and the one-year statute of limitations on such claims cannot extend to the filing of this case in 2021.

The motion to dismiss the tenth cause of action for conversion of plaintiff's dog is denied. Plaintiff has properly alleged a legal right of ownership or a superior right of possession in the dog and that defendant exercised unauthorized dominion over the dog to the exclusion of plaintiff's rights that is a continuing conversion.

The motion to dismiss the eleventh cause of action for breach of the partnership agreement is granted as duplicative of the breach of contract claim.

The motion to dismiss the twelfth cause of action for quantum meruit is denied because it was pled in the alternative to the breach of contract claim.

The motion to strike is denied. The allegations in the complaint are relevant to the viable conversion claim and provide context to the pattern of other wrongdoing by Sorenson alleged in

the complaint. See *New York Health and Hospitals Corp. v. St. Barnabas Community Health Plan*, 22 A.D.3d 391, 391 (1st Dept. 2005).

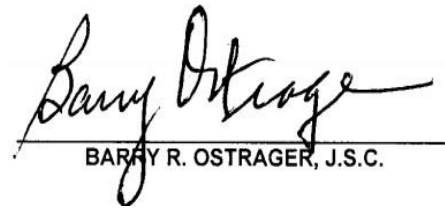
Accordingly, it is hereby

ORDERED that the motion to dismiss by defendants is denied as to Counts 3, 10, and 12, granted in part as to Counts 1 and 2, and granted as to Counts 4, 5, 6, 7, 8, 9, and 11, and those claims are severed and dismissed; and it is further

ORDERED that defendants shall answer the remaining claims within 20 days of the date of this decision and order; and it is further

ORDERED that all counsel shall appear on May 31, 2022 at 10:30 a.m. for a preliminary conference. The parties are directed to submit a dial-in number for the conference no later than May 20, 2022. To that end, the parties are directed to meet and confer to agree upon the terms of a Preliminary Conference Order using the form available on the Part 61 website with a Note of Issue deadline no later than 12 months from the date of this Order, and e-file it with a request to so Order by May 20, 2022. If the proposed Preliminary Conference Order is acceptable to the Court, it will be So Ordered and no appearance will be necessary on May 31, 2022.

Dated: May 5, 2022


BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE