

Duzyk v Dragoncurve Fin. Capital, Inc.

2022 NY Slip Op 32671(U)

August 5, 2022

Supreme Court, New York County

Docket Number: Index No. 653996/2020

Judge: Arlene Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

RYAN DUZYK

Plaintiff,

- v -

DRAGONCURVE FINANCIAL CAPITAL, INC.,

Defendant.

-----X

INDEX NO. 653996/2020

MOTION DATE 8/5/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 were read on this motion to/for SUMMARY JUDGMENT.

The motion by defendant for summary judgment is denied.

Background

Plaintiff contends that he was hired by defendant under the terms of an offer letter dated August 13, 2019. He alleges that under these terms, he started working for defendant on August 15, 2019 with an annual salary of \$130,000. Plaintiff contends that defendant was in the midst of negotiations to acquire another company during this time period and that he was told by defendant’s CEO that his first paycheck had to be delayed because of the acquisition negotiations. Plaintiff says he never agreed to defer his salary. He maintains that the acquisition was never completed and he never got paid despite working for defendant for nearly a year. He argues he is owed \$130,000 in back salary.

Defendant moves for summary judgment on the ground that the offer letter was superseded by a subsequent commission-only employment agreement signed by plaintiff. It insists that plaintiff ratified this agreement by his nearly year-long employment on a commission

only basis with a related entity Digital Financial Group LLC (“Digital Financial”). Defendant argues that plaintiff, a purportedly sophisticated finance professional, clearly knew he agreed to work on a commission-only basis. It argues that plaintiff’s inability to earn commissions does not entitle him to a fixed salary.

Defendant alleges that it was a shell company, formed for the purpose of acquiring and holding another entity, and that it never hired any employees. It contends that its CEO, Mr. Eden (also CEO of Digital Financial), met with David Duzyk, plaintiff’s father, about hiring his son and admits it eventually sent an offer letter to plaintiff. Defendant claims that the letter was sent solely to aid in plaintiff’s effort to secure an apartment (plaintiff needed an offer of employment) but that it should not be viewed as an employment agreement.

It argues that plaintiff showed up for work on September 1, 2019 at the offices of Digital Financial and signed various documents in which he acknowledged that Digital Financial would be his employer and that his salary would be commission-only. Defendant maintains that plaintiff worked for Digital Financial for nearly a year and did not receive any pay because he never closed a deal or made any sales during his employment for Digital Financial. Defendant emphasizes that plaintiff sent emails in which he acknowledged that he worked for Digital Financial rather than defendant and that he had a work email address that signified he worked for Digital Financial.

In opposition, plaintiff claims that his salary for defendant was never made contingent on any sales nor did he agree to defer his salary. He maintains that the defendant’s only argument is that the offer letter was superseded by on-boarding documents he signed for Digital Financial and that argument fails. Plaintiff claims that those documents do not clearly identify his employer as Digital Financial and the document about receiving commissions is not signed by

plaintiff. Plaintiff also questions what the exact details of the commission scheme would be and claims he was never told what it was. Plaintiff insists he was never ratified any other agreement.

In reply, defendant argues that plaintiff has impliedly conceded that there is no enforceable employment agreement and that the offer letter (with its purportedly indefinite terms) cannot constitute a binding agreement. Defendant argues that plaintiff was an at-will employee and so the terms of his employment could be unilaterally changed at any time. It insists that there is nothing in this record that shows that plaintiff ever considered himself an employee of defendant.

Discussion

“A party moving for summary judgment must demonstrate that the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in the moving party's favor. Thus, the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. This burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party. If the moving party meets this burden, the burden then shifts to the non-moving party to establish the existence of material issues of fact which require a trial of the action” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833, 988 NYS2d 86 [2014] [internal quotations and citations omitted]).

The Court denies the motion. Both parties present wildly divergent accounts of what took place in the time plaintiff allegedly worked for defendant. Plaintiff claims he was working for defendant and had his salary continually withheld without his consent while defendant seems baffled as to how plaintiff could think he worked for defendant. At his deposition, plaintiff

contends he inquired about his compensation occasionally and was told that he was going to receive it at some point (NYSCEF Doc. No. 34 at 177-78 [describing that he spoke with someone at HR who acknowledged that plaintiff needed to get paid]).

Plaintiff's deposition also makes clear that he was a bit reticent to make a big fuss about not getting paid as he claimed he didn't want to "cause attention really" and he "thought it would be better, rather than to cause any tension about not getting paid to—you know, Ethan [defendant and Digital's CEO] was always very assuring that—you know, like we—he was going to pay me" (*id.* at 173).

At Ethan Eden's deposition, he reiterated the point that defendant never had any employees and no one did any work for this entity outside of its partners (NYSCEF Doc. No. 36 at 15-16). Mr. Eden claimed that the plan was for plaintiff to start working for defendant when a deal between defendant and another entity was completed but that this deal never closed (*id.* at 34).

Certainly, defendant is correct to point out that plaintiff sent emails from an email account associated with Digital Financial and that he admitted in a July 2020 email that he worked for Digital Financial (NYSCEF Doc. No. 42). And the documents plaintiff signed in connection with starting to work for Digital Financial (NYSCEF Doc. No. 41) also suggest he was working for Digital Financial, although plaintiff is right that there is no information about how he would receive compensation for commissions. There is nothing included about a formula to calculate his compensation.

In any event, this Court cannot overlook the offer letter, which specifically offers plaintiff a position at *defendant* with a start date (August 15, 2019) and that he would receive an annual salary of \$130,000 (NYSCEF Doc. No. 40). The letter is signed by Ethan Eden as CEO of

defendant (although he is also the CEO of Digital Financial). That plaintiff signed documents for another entity does not make this offer letter vanish. Individuals are certainly allowed to work for more than one entity, especially where compensation for one entity is salary-based while another is allegedly commission only.

And Mr. Eden, defendant's CEO, sent an email dated August 13, 2019 in which he noted that plaintiff's compensation would be deferred pending the closing of an acquisition (NYSCEF Doc. No. 50). Nothing in this email suggests, as Mr. Eden testified at his deposition, that plaintiff's entire employment for defendant was contingent on the completion of the acquisition. This email, combined with the offer letter that contained an annual salary, suggests that defendant was not going to compensate plaintiff via a commission only scheme as defendant argues.

The Court views defendant's arguments as practical considerations that must be evaluated by a fact finder. Defendant asks the Court to view a nearly year-long employment in which plaintiff was never paid, worked at Digital Financial's offices, and used a Digital Financial email address as clear evidence that plaintiff is not entitled to any back pay from defendant. The issue for this Court is that defendant's arguments rely exclusively on circumstantial evidence. There is no document that expressly nullified the offer letter *sent on behalf of defendant*, under which plaintiff contends he worked.

If defendant's claim that defendant was a shell company without any employees is true, then why did Mr. Eden sign an offer letter to plaintiff as defendant's CEO on defendant's letterhead and offer plaintiff a job as defendant's "Vice President of Corporate Development and External Communications"? A fact finder might find plaintiff's theory that he worked for nearly a year without any compensation as lacking all credibility, it could find that defendant played

fast and loose with corporate formalities, it could sympathize with plaintiff's testimony that he didn't want to draw attention at a job where he wanted to excel or a fact finder could conclude something else altogether. Under these circumstances, the Court simply cannot award defendant summary judgment as a matter of law. To do so would require the Court to make credibility determinations about the relationship between Digital Financial and defendant, and plaintiff's beliefs about his employer as well his compensation expectations.

While defendant claims the offer letter was created as part of plaintiff's effort to get an apartment (NYSCEF Doc. No. 39), that does not explain why it was sent from defendant and not Digital Financial and why it has a specific salary if that was not true. And, if these were mistakes, then defendant had ample opportunity to correct the errors and have plaintiff sign something acknowledging that he did not work for defendant and that he was not entitled to a salary. Moreover, if plaintiff's employment for defendant was really contingent on the completion of the acquisition deal, then defendant or Digital Financial was surely capable of drafting an agreement reflecting that reality. Instead, it seems that both plaintiff and defendant let the vague status quo remain in effect until plaintiff got fired.

Plaintiff's Labor Law causes of action also survive as they are based on this claim that he was working under the offer letter and he contends that he was fired once he started complaining about not getting paid (NYSCEF Doc. No. 34 at 74).

The Court declines to issue any sanctions against defendant (as requested by plaintiff) because the instant motion was far from frivolous.

Summary

The Court recognizes that the undisputed fact is that plaintiff worked for nearly a year without any compensation. But this Court cannot assume that fact means that plaintiff ratified a

scheme in which he agreed to be paid only via commissions. That would require the Court to draw conclusions about probabilities and which party's account is more persuasive. A motion for summary judgment is not the right forum to do that.

Accordingly, it is hereby

ORDERED that the motion by defendant for summary judgment is denied.

8/5/2022
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE