

<b>Hughes v KNIC Dev. Co.</b>
2022 NY Slip Op 33696(U)
October 28, 2022
Supreme Court, New York County
Docket Number: Index No. 161251/2020
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

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SARAH HUGHES,

Plaintiff,

- v -

KNIC DEVELOPMENT COMPANY, KNIC PROPERTIES, LP, KNIC, LLC, and KEVIN PARKER,

Defendants.

-----X

INDEX NO. 161251/2020

MOTION DATE 04/23/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24

were read on this motion to/for

DISMISSAL

ORDER

Upon the foregoing documents, it is

ORDERED that the cross motion of plaintiff to serve the proposed second amend complaint is GRANTED only as to the allegations of the first cause of action for breach of contract against KNIC Development Company, and the cross motion is otherwise DENIED; and it is further

ORDERED that the motion of defendants to dismiss and/or strike the first (breach of contract) cause of action as against KNIC Properties, LP, and KNIC, LLC; and in their entirety, the second (unjust enrichment) and the third (New York Labor Law statutory) causes of action of the proposed second amended

complaint is GRANTED, and such causes of action are DISMISSED/STRICKEN; and it is further

ORDERED that the second amended complaint is dismissed in its entirety as against defendants KNIC Properties, LP, KNIC, LLC, and KEVIN PARKER, with costs and disbursements to such defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of such defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that within ten (10) days of service of a copy of this order with notice of entry, plaintiff shall serve and file the second amended complaint, revised in accordance with the foregoing; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (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 Clerk of the Court 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](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that the remaining defendant is directed to serve an answer to the second amended complaint within thirty (30) days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel shall post on NYSCEF a proposed preliminary conference order or competing preliminary conference order(s) at least two days before December 13, 2022, on which date counsel shall appear via Microsoft Teams, unless such appearance be waived by the court.

#### DECISION

As the defendants' reply/opposition addresses on the merits plaintiff's cross motion to serve the proposed second amended complaint, this court exercises its discretion to grant such cross motion to the extent of treating such proposed second amended pleading as the pleading challenged in defendants' initial motion to dismiss. See Bankers Conseco Life Insurance Company v Egan-Jones Ratings Company, 193 AD3d 5 (1<sup>st</sup> Dept 2021).

In such regard, this court agrees with defendants KNIC Properties, LP, and KNIC, LLC, that the proposed second amended complaint fails to state meritorious causes of action for breach

of contract and unjust enrichment against either defendant KNIC Properties, LP, or defendant KNIC, LLC. Those claims against such defendants are refuted by documentary evidence in the form of the Employment Agreement dated January 7, 2015 (NYSCEF Document Number 13), to which neither KNIC Properties, LP, nor KNIC, LLC, is a signatory. See Randall's Island Aquatic Leisure, LLC v City of New York, 92 AD3d 463 (1<sup>st</sup> Dept 2012) and Bellino Schwartz Padob Advertising, Inc. v Solaris Marketing Group, Inc., 222 AD2d 313 (1<sup>st</sup> Dept 1995).

The defendants are also correct that the New York Labor Law § 193 claim against all three defendants is insufficiently pled. As argued by defendants, "a wholesale withholding of payment," as alleged by plaintiff, "is not a 'deduction' within the meaning of Labor Law § 193" ("no employer shall make any deduction from the wages of an employee"). See Perella Weinberg Partners LLC v Kramer, 153 AD3d 443, 449 (1st Dept 2007).

As for plaintiff's allegations about the failure of defendants to pay her the promised signing bonus, the Employment Agreement, 3(b), at bar, states, in pertinent part,

"In addition, Executive shall receive within ten (10) days after the Effective Date, a signing bonus equal to the salary she would have received if this Agreement had been effective from January 1, 2014 through the Effective Date."

This court likewise concurs with defendants that, as such contractual provision does not expressly link the signing bonus to any work that plaintiff had actually performed, such payment is not a wage, and therefore does not qualify for protection under the New York Labor Law. See Doolittle v Nixon Peabody LLP, 155 AD3d 1652, 1655 (4<sup>th</sup> Dept 2017). Cf Ryan v Kellogg Partners Institutional Services, 19 NY3d 1, 12 (1<sup>st</sup> Dept 2012) (“compensation that he says he was promised [orally] by [his employer] at the outset of his employment . . . in exchange for work he thereafter performed in reliance upon [such oral] promises).

This court agrees with defendants that neither Labor Law § 190 nor Labor Law § 198 creates a cause of action. Nor does plaintiff make any allegations that constitute a violation by defendants of Labor Law § 192, which is a prohibition against employers directly depositing wages in a bank or other financial institution without the employee’s written consent.

Likewise, defendants are correct that plaintiff’s allegations are insufficient to state a New York Labor Law claim against either defendant KNIC Properties, LP, defendant KNIC, LLC (see Batilo v Mary Manning Walsh Nursing Home Co., Inc., 140 AD3d 637 [1<sup>st</sup> Dept 2016] [must plead facts of an “absence of an arm’s length relationship among unintegrated companies”]), or defendant Kevin Parker (see Brankov v Hazzard, 142 AD3d 445, 446

[1<sup>st</sup> Dept 2016] [must allege facts that show defendant had "immediate control" over the employees)], as her employers.

*Debra A. James*

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10/28//2022  
DATE

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DEBRA A. JAMES, 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