

Rocket Shippers, LLC v SB Global Ventures PTE Ltd.

2022 NY Slip Op 33721(U)

October 14, 2022

Supreme Court, New York County

Docket Number: Index No. 650843/2021

Judge: Verna L. Saunders

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36M

Justice

-----X
ROCKET SHIPPERS, LLC, INDEX NO. 650843/2021
Plaintiff, MOTION SEQ. NO. 001

- v -

SB GLOBAL VENTURES PTE LTD.,
SERIAL SYSTEM LTD.,
HEMP HEALTH LLC d/b/a EVO HEMP,
SEAN GOH, IRENE GOH, ARI SHERMAN,
JOURDAN SAMEL, VINSOM SIM, SHIRLEY TAI,
and GEORGE BLANKENBAKER,
Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for

DISMISSAL

Plaintiff commenced this action against defendants SB GLOBAL VENTURES PTE LTD, SERIAL SYSTEM LTD., HEMP HEALTH, LLC d/b/a EVO HEMP, SEAN GOH, ARI SHERMAN, JOURDAN SAMEL, VINSOM SIM, SHIRLEY TAI, and GEORGE BLANKENBAKER (collectively, “defendants”) to recover \$21,491.38 in funds owed pursuant to an agreement (“SB Global agreement”) entered between SB GLOBAL VENTURES PTE LTD (“SB GLOBAL”) and plaintiff on or about February 3, 2020. (NYSCEF Doc. No. 1. *summons and complaint*). In its complaint, plaintiff asserts that pursuant to the agreement, SB GLOBAL agreed to pay plaintiff for warehousing, storage, packaging, shipping, logistics, and distribution. Insofar as SB GLOBAL has allegedly failed to tender payment for certain outstanding invoices, plaintiff asserts causes of action for breach of contract, unjust enrichment, and account stated.

Defendants, HEMP HEALTH, LLC, JOURDAN SAMEL, and ARI SHERMAN (“Hemp defendants”), now move the court seeking to dismiss the complaint against them pursuant to CPLR 3211(a)(1), (a)(5), (a)(7), and (a)(10) (NYSCEF Doc. No. 8, *notice of motion*). The Hemp defendants argue 1) that as HEMP HEALTH, LLC is not a party to the SB GLOBAL agreement, they cannot be held liable for its breach; 2) that the unjust enrichment cause of action is unavailable here as there is a valid and enforceable contract governing the dispute; 3) a cause of action for account stated cannot be asserted against parties that did not contract to pay for plaintiff’s services; 4) the statute of frauds bars HEMP HEALTH, LLC from acting as a surety for SB GLOBAL as there is no written agreement whereby HEMP HEALTH, LLC agreed to pay the debts of SB GLOBAL; and 5) that as plaintiff failed to properly annex proof of service upon SB GLOBAL and the time to do so has since expired, plaintiff has failed to join a necessary party (NYSCEF Doc. No. 9, *memorandum of law in support*).

Plaintiff opposes the motion and cross-moves to amend its complaint to assert direct breach of contract claims against the Hemp defendants based on the recent discovery of a written contract with HEMP HEALTH, LLC (NYSCEF Doc. Nos. 16-17, *memorandum of law and affirmation in support*). Plaintiff argues that insofar as this direct contract with HEMP HEALTH, LLC exists, the motion to dismiss should be denied. Plaintiff also argues that as SB GLOBAL is based in Singapore and is outside of the jurisdiction of this court, it is impractical to serve it and its presence in the action has no bearing on plaintiff's claims against the Hemp defendants.

In reply, the Hemp defendants argue that their motion to dismiss should be granted with respect to the individually named defendants who are not personal signatories or guarantors of the SB GLOBAL agreement; that the quasi-contractual relief sought is precluded as there is a written contract in existence; that the claims of account stated fail as no invoices were addressed to said individual defendants; and that plaintiff's failure to serve SB GLOBAL, the signatory to the SB GLOBAL agreement and thus, a necessary party, is fatal and warrants dismissal. As to plaintiff's motion to amend, the Hemp defendants oppose, arguing, *inter alia*, that the proposed amended complaint seeks to include causes of action in connection with a contract between GSD LOGISTICS and HEMP HEALTH, LLC and there is no explanation as to who GSD LOGISTICS is or their relation to plaintiff herein, who is not named in this newly discovered contract. The contract also does not involve the individual defendants who are named here. (NYSCEF Doc. No. 22, *reply memorandum in support of dismissal*).

Finally, in further support of its cross-motion for leave to amend its complaint, plaintiff reiterates that it should be permitted to amend its complaint to include causes of action with respect to its contract with the Hemp defendants and that as no discovery has been exchanged, there is no prejudice to the Hemp defendants. Plaintiff also asserts that its account stated claims should not fail insofar as it sent invoices directly to the Hemp defendants who tendered multiple payments on the account. Plaintiff's amended complaint seeks to remove SB GLOBAL and the Singapore-based defendants, contending that service upon them would be impractical (NYSCEF Doc. No. 23, *memorandum in reply*).

The court will first address plaintiff's cross-motion to amend its complaint. Leave to amend a pleading pursuant to CPLR § 3025 "shall be freely given," in the absence of prejudice or surprise (*see e.g. Thompson v Cooper*, 24 AD3d 203, 205 [1st Dept 2005]; *Zaid Theatre Corp. v Sona Realty Co.*, 18 AD3d 352, 354 [1st Dept 2005]). CPLR 3025 requires "[a]ny motion to amend or supplement pleadings [to] be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading."

Here, upon a review of the proposed amended complaint, which is not redlined in accordance with CPLR 3025 and seeks relief only as to the Hemp defendants, that application is denied (NYSCEF Doc. No. 18, *proposed amended complaint*). While the SB GLOBAL agreement and the GSD LOGISTICS agreement were both signed by the same person, to wit: Leo Russell,¹ on behalf of ROCKET SHIPPERS, LLC and GSD LOGISTICS, respectively, the record is devoid of a connection between ROCKET SHIPPERS, LLC, plaintiff herein, and GSD LOGISTICS such that plaintiff herein would have standing to pursue the claims of GSD

¹ Leo Russell appears to be the CEO of both Rocket Shippers, LLC and GSD Logistics.

LOGISTICS (NYSCEF Doc. Nos. 11, 20, *contracts*). Insofar as there is no assignment, or explanation of any kind, plaintiff's motion to amend its complaint, to include direct breach of contract claims related to a contract wherein plaintiff is not one of the named parties/signatories of the agreement, is denied.

Turning next to the motion in chief, the Hemp defendants seek dismissal of the complaint pursuant to CPLR 3211(a)(1),(a)(5),(a)(7), and (a)(10). A motion to dismiss a complaint, pursuant to CPLR 3211(a)(1), may be granted only when the documentary evidence submitted utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law. (see *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Basis Yield Alpha Fund [Master] v Goldman Sachs Group, Inc.*, 115 AD3d at 134; *Ladenburg Thalmann & Co. v Tim's Amusements*, 275 AD2d 243, 246 [1st Dept 2000].)

When considering defendants' motion to dismiss for failure to state a cause of action, pursuant to CPLR 3211(a)(7), the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Normally, a court should not be concerned with the ultimate merits of the case (*Anguita v Koch*, 179 AD2d 454, 457 [1st Dept 1992]). However, these considerations do not apply to allegations consisting of bare legal conclusions as well as factual claims which are flatly contradicted by documentary evidence (*Simkin v Blank*, 19 NY3d 46, 52 [2012]).

Under CPLR 3211(a)(10) a party may move to dismiss if "the court should not proceed in the absence of a person who should be a party." Pursuant to CPLR 1001 a person or entity ought to be joined as a party to an action if such person or entity "might be inequitably affected by a judgment" in the action.

In the case at bar, while plaintiff names SB GLOBAL as a party to this action, plaintiff concedes that it did not attempt service upon SB GLOBAL, stating that as it is a Singapore entity service would be impractical and or impossible. This argument is unavailing insofar as CPLR 311(a)(1), CPLR 313, as well as, BCL 306 and 307 govern the methods effectuating service upon a foreign corporation. (see also, *Breer v Sears, Roebuck & Co.*, 184 Misc 2d 916 [Sup Ct, Bronx County 2000].) Nevertheless, plaintiff failed to make any attempts to serve SB GLOBAL, failed to move this court seeking to dispense of the need for service upon said defendant, and failed to advance any arguments to rebut the contention that SB GLOBAL is a necessary party to this action. Thus, insofar as SB GLOBAL is the other contracting party to the February 3, 2020 contract giving rise to the complaint here, SB GLOBAL is a necessary party and the action must be dismissed (NYSCEF Doc. No. 11, *contract*).

Assuming *arguendo*, that the action should not be dismissed based on the contention that the Hemp defendants assumed the obligations of the contract by tendering payment on certain invoices relating to the SB GLOBAL agreement, this argument does not lie as the court does not reach the merits of any purported claims against the Hemp defendants as plaintiff has failed to serve a necessary party in this action. Furthermore, it is undisputed that the Hemp defendants are not parties to the SB GLOBAL agreement and it is well-settled that a non-party to a contract

cannot be named as a defendant in a breach of contract action unless the non-party assumed the obligations under the agreement. (see *N.F. Gozo Corp. v Kiselman*, 38 Misc 3d 48 [App Term 2012].) Here, the redacted account statement, annexed to plaintiff's papers, which appears to display wire transfers from HEMP HEALTH, LLC to plaintiff, without more, fails to demonstrate that the Hemp defendants assumed obligations of the SB GLOBAL agreement (NYSCEF Doc. No. 21, *account statement*). Specifically, plaintiff fails to annex an affidavit from someone with personal knowledge who can attest that the wire transfers made were in satisfaction of specific invoices relating to services rendered under a specific contract. Insofar as there are purportedly two contracts in contention involving what appears to be four entities, sufficient details have not been proffered such that the court could find that HEMP HEALTH, LLC assumed obligations of SB GLOBAL or any other party named herein. The remaining arguments, while considered, need not be addressed given the findings above. Accordingly, it is hereby

ORDERED that, the motion of HEMP HEALTH, LLC, JOURDAN SAMEL, and ARI SHERMAN's to dismiss the complaint is granted; and it is further

ORDERED that, the cross-motion filed by plaintiff ROCKET SHIPPERS, LLC seeking leave to amend its complaint is denied; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for plaintiff ROCKET SHIPPERS, LLC shall serve a copy of this decision and order, with notice of entry, upon all parties, as well as, on the Clerk of the Court, who shall enter judgment accordingly.

This constitutes the decision and order of the Court.

October 14, 2022

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE