

Samovar Mgt. Group, Inc. v Russian Samovar, Inc.

2022 NY Slip Op 34175(U)

December 8, 2022

Supreme Court, New York County

Docket Number: Index No. 655282/2016

Judge: David B. Cohen

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

PRESENT: HON. DAVID B. COHEN

PART 58

Justice

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INDEX NO. 655282/2016

SAMOVAR MANAGEMENT GROUP, INC.,

Plaintiff,

MOTION SEQ. NO. 001

- v -

RUSSIAN SAMOVAR, INC., LARISA KAPLAN, and VLADA
VON SHATS,**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44

were read on this motion to/for

PARTIAL SUMMARY JUDGMENT

In this tort and contract action commenced by plaintiff Samovar Management Group, Inc. (“SMG”), defendants Russian Samovar Inc. (“RSI”), Larissa Kaplan (“Kaplan”) and Vlada Von Shats (“Von Shats”) (collectively “defendants”) move, pursuant to CPLR 3212, for partial summary judgment dismissing SMG’s second and third causes of action. SMG opposes the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

SMG commenced the captioned action by filing a summons and verified complaint on October 5, 2016. Doc. 1. In the complaint, SMG alleged that, on September 23, 2011, it entered into an agreement with RSI (“the contract”) pursuant to which RSI, the owner of Russian Samovar Restaurant in Manhattan, retained SMG as its sole and exclusive manager. Doc. 1 at pars. 8-9; Doc. 20; Doc. 24; Doc. 28; Doc. 40. In that role, SMG was to “oversee all aspects of [RSI].” Doc.

1 at par. 9; Doc. 20. The contract also provided that SMG would renovate RSI at SMG's own cost and expense, which costs were estimated to be approximately \$200,000; that during the term of the contract SMG would pay Kaplan, a director, officer and principal shareholder of RSI, and her husband, nonparty Roman Kaplan ("Roman"), also a director and officer of RSI, a "flat royalty fee" of \$2,000 per week; SMG was to receive 90% of all monthly "net profits" from the operation of RSI, as that term was defined by the contract; and SMG was to have "complete discretion over the management of [RSI] and RSI was to "allow [SMG] to manage [RSI] in any way it [saw] fit." Doc. 1 at par. 10; Doc. 20; Doc. 24; Doc. 40. Additionally, in exchange for executing the contract, SMG was obligated to pay RSI's arrears amounting to approximately \$5,000 and to pay all of RSI's bills. Doc. 20; Doc. 24; Doc. 40. The contract further provided that it was to expire on December 31, 2016 and that it could not be terminated by RSI earlier than that date for any reason except arrears in payment of fees. Doc. 1 at par. 11; Doc. 20.

On or about September 9, 2016, SMG was informed that it was being "terminated" as RSI's manager and that the restaurant was under "new management." Doc. 1 at par. 13. Despite SMG's September 12, 2016 demand that it be reinstated as manager of RSI, SMG refused. Doc. 1 at par. 15.

As a first cause of action, SMG alleged that RSI breached the contract by terminating it prior to the expiration of the agreement. Doc. 1 at pars. 18-20.

As a second cause of action for "Money Lent", SMG alleged that RSI failed to repay it for three loans it made to RSI: 1) a \$42,000 loan in October 2011; 2) a \$7,000 loan in December 2011; and 3) a \$6,000 loan in February 2013. Doc. 1 at par. 22. SMG alleged that, although RSI had promised to repay the loans upon demand and with interest, it failed to do so despite demand for repayment and, thus, owes SMG \$55,000 plus interest. Doc. 1 at pars. 23-26.

As a third cause of action, SMG alleged that, between June 2016 and September 9, 2016, Kaplan and Von Shats, Kaplan's daughter, tortiously interfered with the contract by inducing RSI to break the contract with SMG and to terminate SMG as RSI's manager so that Von Shats could replace SMG. Doc. 1 at pars. 29-32. As a result, SMG alleged that it was entitled to damages of no less than \$250,000 plus punitive damages of at least \$500,000. Doc. 1 at par. 32.

Defendants joined issue by their answer filed December 30, 2016. Doc. 5. In their answer, defendants denied all substantive allegations of wrongdoing and asserted various affirmative defenses. They also counterclaimed against SMG for breach of contract, fraud, breach of the covenant of good faith and fair dealing, and conversion. Doc. 5.

Concomitantly with the filing of its answer, RSI commenced a third-party action against Alexander Agajanov ("Agajanov"), SMG's principal and sole shareholder, claiming fraud, breach of the covenant of good faith and fair dealing, conversion, and unjust enrichment. Doc. 5.

On or about February 13, 2017, Agajanov joined issue by his answer to third-party complaint, in which he essentially denied all substantive allegations of wrongdoing. Doc. 8.

Plaintiff filed a note of issue and certificate of readiness on May 22, 2018. Doc. 15.

Defendants now move, pursuant to CPLR 3212, for partial summary judgment dismissing SMG's second and third causes of action. Docs. 16-15. In support of the motion, defendants argue that the allegations in the second cause of action regarding a loan must be dismissed since the alleged loan amounts were actually arrears which SMG was responsible to pay pursuant to the contract. Doc. 25 at 8-12. They further assert that the third cause of action must be dismissed since Kaplan, who signed the contract on behalf of herself and RSI, was not a third-party who could have interfered with the agreement. Doc. 25 at 6. They further assert that there is no documentary evidence establishing or even suggesting that Von Shats interfered with the contract. Doc. 25 at 7.

In an affidavit in opposition to the motion, Agajanov asserts that SMG made all payments owed to RSI, Roman and Larisa as required by the contract. Doc. 28. He further asserts that several of the representations in Larisa's affidavit are false. Doc. 28. Thus, he insists, RSI wrongfully terminated the contract. Doc. 28.

In a memorandum of law in opposition, SMG argues that defendants' motion must be denied insofar as it seeks to dismiss the second cause of action for "money lent." Doc. 41. Although defendants assert that monies advanced by SMG to RSI were not loans, SMG insists that RSI's tax returns reflect that the money was in fact loaned. Doc. 41.

SMG further maintains that the branch of defendants' motion seeking to dismiss its third cause of action against Larisa and Von Shats for tortious interference with contractual relations must also be denied. Doc. 41. In support of this argument, SMG maintains that, since Larisa was not a party to the contract, she could be found to have tortiously interfered with the agreement. Doc. 41. Although SMG concedes that it does not have documentary evidence of Von Shats' complicity with Larisa in inducing RSI to terminate the contract, it represents that it will call "witnesses at trial to establish that the reason Larisa terminated SMG as [RSI's] manager was so that Von Shats and her company could be installed as [RSI's] manager in place of SMG and that it was at the instance of Von Shats [that] Larisa terminated SMG as [RSI's] manager." Doc. 41 at 13.

In reply, defendants argue that, since Larisa signed the contract on behalf of herself and RSI, she is unable to prevail on a claim of tortious interference with the agreement. Doc. 42. They further assert that the contract and Agajanov's testimony establish that RSI owed SMG \$42,000 in arrears and that those arrears were not converted into a loan. Doc. 42. Additionally, they maintain

that no evidence has been adduced establishing that Von Shats interfered with the contract. Doc. 42.

LEGAL CONCLUSIONS

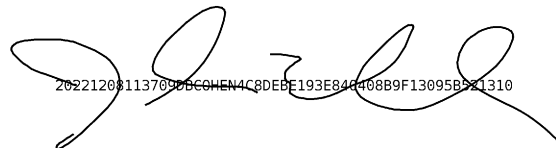
A party moving for summary judgment pursuant to CPLR 3212 “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The “facts must be viewed in the light most favorable to the non-moving party” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted]). Once the moving party has met this prima facie burden, the burden shifts to the non-moving party to furnish evidence in admissible form sufficient to raise a material issue of fact (*Alvarez*, 68 NY2d at 324). However, a moving party’s “[f]ailure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*id.*).

Here, as discussed above, defendants maintain that the second cause of action must be dismissed since the amounts SMG claims were loans were actually arrears which SMG was responsible to pay pursuant to the contract. Additionally, defendants maintain that the third cause of action must be dismissed since Kaplan, a signatory to the contract on behalf of herself and RSI, was not a third-party who could have tortiously interfered with the agreement. Thus, both of the claims sought to be dismissed by defendants relate to the terms of the contract. However, since defendants failed to properly authenticate the contract, it is evident that they have not established their prima facie entitlement to summary judgment (*See Garces v Windsor Plaza, LLC*, 189 AD3d 539, 540 [1st Dept 2020] citing *Clarke v American Truck & Trailer, Inc.*, 171 AD3d 405, 406 [1st Dept 2019]) and it is thus unnecessary to address the sufficiency of SMG’s opposing papers.

Additionally, the claims against Von Shats cannot be dismissed based solely on her contention that there is no evidence reflecting that she interfered with the contract since a defendant cannot establish her prima facie entitlement to summary judgment merely by pointing to gaps in plaintiff's proof (*See Vasquez v Ridge Tool Pattern Co.*, 205 AD3d 657, 661 [1st Dept 2022]).

Accordingly, it is hereby:

ORDERED that the motion by defendants Russian Samovar Inc., Larissa Kaplan, and Vlada Von Shats seeking partial summary judgment dismissing plaintiff Samovar Management Group, Inc.'s second and third causes of action pursuant to CPLR 3212 is denied.



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12/8/2022

DATE

DAVID B. COHEN, 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