

Cooke v Greenhouse Hudson, LLC
2022 NY Slip Op 35227(U)
August 30, 2022
Supreme Court, Columbia County
Docket Number: Index No. E012022018190
Judge: Henry F. Zwack
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF COLUMBIA

ERIN GOLDMAN COOKE,

Plaintiff,

-against-

GREENHOUSE HUDSON, LLC, GREEN STREET FLORAL, LLC,
JENNIFER MOJO, individually as aider and abettor, and DAVID
MOJO, individually as aider and abettor,

Defendants.

GREEN STREET FLORAL, LLC,

Third-Party Plaintiff,

-against-

ERIN GOLDMAN COOKE,

Counterclaim Defendant,

-and-

G.G. & G. FLOWER CO., LLC and
DARRYN COOKE,

Third-Party Defendants.

All Purpose Term

Hon. Henry F. Zwack, Acting Supreme Court Justice Presiding
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Appearances:

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DECISION/ORDER**Zwack, J.:**

In this discrimination of employment action, the plaintiff and Third Party Defendant Erin Goldman Cooke and Third Party Defendants Darryn Cooke and G.G. & G. Flower Co., LLC (“Movants”) have moved under CPLR 3211(a)(1), (3), and (7) to dismiss the counterclaims and third-party claims made by the Third Party Plaintiff Green Street Floral, LLC. The counterclaims against the plaintiff and third party defendant Erin Goldman for which dismissal is sought are Breach of Contract, Faithless Servant, Conversion and Tortious Interference with Business Relationship. As to Third-Party Defendant G.G. & G. Flower Co., LLC, dismissal is sought as to the First Third-Party Claim for Breach of Duty of Good Faith and Fair Dealing. With respect to Third-Party Defendant Darryn Cooke, dismissal of the Third-Party Claim for Breach of Contract is sought. Defendant and Third-party Green Street Floral, LLC oppose the motion to dismiss.

Here, the Movants argue that all counterclaims and cross-claims filed by Green Street Floral should be dismissed because it does not have standing to assert any claims against the Third-Party Defendant —particularly, as the documentary evidence will show, no contract exists between the plaintiff Erin Goldman Cooke, Darryn Cooke or G& G. and Green Street Floral. Green Street Floral opposes.

According to the complaint, an Asset Purchase Agreement was entered into by G & G Flower Company, Inc., doing business as the Rosery Flower Shop, the Seller, whose majority shareholder was Erin Goldman Cooke, and Defendants Jennifer Mojo and David Mojo, the Buyers. Plaintiff and defendants entered into a Post-Closing Employment Agreement, whereby Plaintiff would remain employed by defendants from September 2021 to June 30, 2022, and manage the day to day operations of the shop. The complaint alleges that defendants were aware of plaintiff's immunocompromised status and her disability, and "understood that Plaintiff's work in the shop was conditioned upon the maintenance of the workplace and safety measures in place to protect plaintiff and shop's employees from COVID-19 infection." Safety measures were ultimately removed over the protest of Plaintiff, and her guaranteed 30 hours a week did not always happen. As a result, the complaint alleges a cause of action for discrimination on the basis of her disabilities and failure to accommodate those disabilities pursuant to the New York State Human Rights Law, retaliation, and breach of contract.

The defendants Answered, asserting eight affirmative defenses, with Counterclaims and Third Party Claims. Particularly, the defendants assert breach of Contract against Cooke; Faithless Servant (duty of good faith and fidelity); Conversion; Breach of Duty of Good Faith and Fair Dealing against Cooke and G.G.& G Flower Co., LLC; Breach of Contract Against Darryn Cooke,

Tortious Interference with Business Relationships against Darryn Cooke. The defendants seek compensatory and punitive damages in their Counterclaims.

For the reasons that follow the Court denies the motion to dismiss.

Here, the Court is mindful, on this application it “must give the pleadings a liberal construction, accept the allegations as true...accord the plaintiffs every possible inference...(with the appropriate determination being whether the plaintiff has)a cause of action, not whether they have properly labeled or artfully stated one” (*Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46, 52[2016]). Again, the pleadings must be liberally construed, and the court must “accept the facts as pled in the complaint as true, give plaintiffs the benefit of every possible favorable inference, and determine whether the facts fit within any cognizable legal theory (*Lewis v DiMaggio*, 115 AD3d 1042, 10343 [3d Dept 2014]).

When a defendant moves to dismiss before any discovery has been done, the plaintiff “need only demonstrate that facts ‘may exist’ ... (and it) need not be demonstrated that they *do* exist” (*Peterson v Spartan Indus.*, 33 NY2d 463, 466 [1974]). The Court “may consider affidavits submitted by plaintiffs to remedy any defects in the complaint, because the question is whether plaintiffs have a cause of action, not whether they have properly labeled or artfully stated one” (*Rushaid v Pictet & Cie*, 28 NY3d 316, 327 [2016], internal citations and quotations omitted).

Here, in the Court's view, the movants rely on the false argument that the wrong parties have asserted counterclaims and third-party claims against them. On this record, this is not the case. There is nothing in the purchase agreement or employment agreement that prevented the purchasers from assigning their rights to other entities. As explained by the Jennifer Mojo in her Affidavit, Greenhouse was formed to own and maintain the real property purchased, with Green Street Floral, LLC assuming the obligations under Ms. Cooke's employment contract. Ms. Mojo explained in her affidavit in opposition to the motion to dismiss that she and her husband own both Greenhouse and Green Street Floral. Green Street Floral issued all of Ms. Cooke's paychecks as her employer. Green Street Floral issued the company credit cards, and Ms. Cooke made deposits in Green Street Floral bank account. Vendor accounts were set in the name of Green Street Floral, and it made the monthly payments on the van. G.G. & G did have a contractual relationship with Green Street Floral. All rights to the G.G. & G. d/b/a Rosery Flower Shop were transferred and assigned to Green Street Floral. Ms. Mojo has provided e-mails attached to her affidavit which on this motion establish the veracity of all the points raised in her affidavit.

Aided by the permissible affidavit of Ms. Mojo, the Court finds that Greenhouse Floral has established it's standing to sue the Movants, and all also that all causes of action are adequately pled.

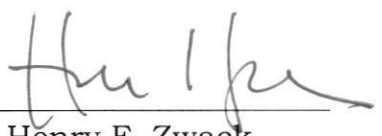
Accordingly, it is

ORDERED, that the motion to dismiss is denied in all respects; and it is further

ORDERED, and it is further that a preliminary conference is scheduled for October 19, 2022 at 1:00 p.m., by Teams.

This constitutes the Decision and Order of the Court. This original Decision and Order is filed by the Court on NYSCEF, which does not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of this rule with regard to filing, entry and Notice of Entry.

Dated: August 30, 2022
Troy, New York


Henry F. Zwack
Acting Supreme Court Justice

Papers Considered, as filed with NYSCEF:

1. Documents #1 through #9;
2. Document #10;
3. Documents #16 through #17;
4. Documents #20 through #25'
5. Documents #29 through #32.