Aldous v 7L Intl., Inc.
2023 NY Slip Op 30129(U)
January 13, 2023
Supreme Court, New York County
Docket Number: Index No. 152357/2022
Judge: Mary V. Rosado
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** ***Justice*** **PART** **33M**

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ANTONIOS ALDOUS,

Plaintiff,

- v -

7L INTERNATIONAL, INC.,VASILIS STOIDIS, 7L INTERNATIONAL LTD, MASSIVE GRID LTD, MASSIVE GRID INC.,AGGELOS VLAVIANOS, ANNIE VOULGAR

Defendant.

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INDEX NO. 152357/2022

MOTION DATE 10/03/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, Defendants 7L International, Inc., 7L International Ltd., Massive Gride Ltd., Massive Grid Inc. (collectively "Corporate Defendants"), Vasilis Stoidis ("Stoidis"), Aggelos Vlavianos ("Vlavianos"), and Annie Voulgar ("Voulgar") (collectively "Defendants"), motion to dismiss Plaintiff Antonios Aldous' ("Plaintiff") Amended Complaint pursuant to CPLR §§ 3211(a)(1), (a)(5), and (a)(7); or in the alternative dismissing Plaintiff's fourth and fifth causes of action pursuant to CPLR § 3211(a)(7) is granted in part and denied in part.

I. Procedural Posture

Plaintiff filed his Complaint on March 18, 2022 (NYSCEF Doc. 1). Plaintiff alleged several causes of action arising out of his employment relationship with Defendants (*id.*). In particular, Plaintiff alleged (1) unlawful retaliation in violation of New York Labor Law ("NYLL") § 215; (2) breach of contract; (3) failure to pay wages in violation of NYLL §§ 191 and 198; (4) unlawful deduction of wages in violation of NYLL § 193, and (5) frequency of pay violations pursuant to

NYLL § 191 (*id.* at ¶¶ 130-170). In response, on June 10, 2022, Defendants Stoidis, 7L International, Inc., 7L International Ltd., and Massive Grid Ltd. filed a pre-answer motion to dismiss pursuant to CPLR §§ 3211(a)(1), (a)(5), and (a)(7) (NYSCEF Doc. 6).

On July 20, 2022, Plaintiff amended his Complaint and submitted opposition to the pending motion to dismiss (NYSCEF Docs. 16-17). The Amended Complaint named new defendants Massive Grid Inc., Vlavianos, and Voulgari (*id.*). On July 26, 2022, the parties stipulated to withdraw the first motion to dismiss in lieu of the recently filed Amended Complaint (NYSCEF Doc. 22). Defendants then filed a motion to dismiss the Amended Complaint on September 15, 2022 (NYSCEF Doc. 25).

Defendants assert that Plaintiff's acceptance of severance pay, along with his failure to respond to an e-mail from Voulgari, constitutes an accord and satisfaction which released all Defendants from Plaintiff's claims (NYSCEF Docs. 28 and 31). In the alternative, Defendants claim that Plaintiff fails to state a claim under NYLL § 191 because he was employed in a "bona fide executive, administrative or professional capacity whose earnings are in excess of nine hundred dollars a week" thereby excepting him from NYLL § 191's protections (*see* NYLL § 190(7); NYSCEF Doc. 31). Defendants also assert that Plaintiff fails to state a claim under NYLL § 193 because the allegedly unlawful wage deductions were for payroll taxes which are required by law (NYSCEF Doc. 31).

Plaintiff in response argues that Defendants are not entitled to dismissal pursuant to an accord and satisfaction defense since that defense is limited to breach of contract claims while Plaintiff has brought several statutory claims (NYSCEF Doc. 36). Moreover, Plaintiff argues that Defendants have failed to secure an enforceable release wherein Plaintiff relinquishes his claims.

Finally, Plaintiff claims that the exceptions to liability under the NYLL cited by Defendants do not apply, and therefore his fourth and fifth causes of action should survive (*id.*).

II. Factual Background

Plaintiff alleges that on June 19, 2020, he entered into a written contract (the "Employment Contract") to work as Vice President of Business Development at Defendant 7L International, Inc. (NYSCEF Doc. 16 at ¶¶ 9 and 11). The Employment Contract was allegedly executed by (1) 7L International, Inc.; (2) 7L International LTD, a British entity affiliated with 7L International, Inc., and (3) Massive Grid LTD, another British entity affiliated with 7L International, Inc. (*id.* at ¶¶ 22-24; 26-27, and 29). Plaintiff alleges that Massive Grid Inc. is a business entity affiliated with the other named Corporate Defendants but does not allege that Massive Grid Inc. was a signatory to his Employment Contract (*id.* at ¶ 36). Plaintiff alleges his work was directly overseen by Stoidis (*id.* at ¶ 14). Stoidis was the Chief Executive Officer ("CEO") of 7L International, Inc., 7L International LTD, and Massive Grid LTD (*id.* at ¶¶ 21; 25; and 28). Voulgari was the Chief Human Resources Officer of all named corporate defendants (*id.* at ¶ 35). Vlavianos was the Chief Operating Officer of all named corporate Defendants (*id.* at ¶ 34).

Plaintiff alleges that he did not have any authority or discretion to make business decisions (*id.* at ¶¶ 14-20). Plaintiff also alleges that Stoidis, Vlavianos, and Voulgari controlled Plaintiff's work, maintained his employment records, and determined certain aspects of his compensation (*id.* at ¶¶44-49). Plaintiff alleges that during his employment as Vice President of Business Development for 7L International Inc., his services also significantly benefited the other corporate defendants (*id.* at ¶ 66). Plaintiff claims that pursuant to the instruction of the Defendants, Plaintiff's e-mail signature named Massive Grid LTD and Massive Grid Inc. (*id.* at ¶ 70). Plaintiff claims he was issued company credit cards for all named corporate defendants (*id.* at ¶ 73).

Plaintiff's annual base salary was $100,000, and he allegedly was entitled to an annual raise of at least 3% of his base salary (*id.* at ¶¶ 76-77). Plaintiff alleges that he was not given his raise (*id.* at ¶ 79). Plaintiff also alleges that he worked from February 1, 2020 through April 14, 2020 without a contract and compensation (*id.* at ¶¶ 82-83). Plaintiff alleges that after complaining to Stoidis on a weekly basis about the missing compensation, he was paid the gross amount of $25,000.00 for two- and one-half months of work (*id.* at ¶ 86). Plaintiff alleges that once a contract was entered, he was paid on a monthly basis instead of bi-weekly, an alleged violation of the NYLL (*id.* at ¶ 99). Plaintiff claims that Defendants failed to deduct taxes from Plaintiff's paychecks despite Plaintiff bringing this issue to Defendants' attention (*id.* at ¶¶ 101-103).

Plaintiff asserts that he received a positive performance review from Defendants during his annual review in February of 2021 (*id.* at ¶¶ 104-112). On June 22, 2021, Plaintiff sent an email to Stoidis regarding Defendants' failure to increase his base salary and stating that the failure to pay compensation from February 1, 2020 through April 14, 2020 was a violation of the NYLL (*id.* at ¶ 114). Plaintiff asserts that this e-mail constitutes protected activity under NYLL (*id.* at ¶ 117). Plaintiff also alleges that Stoidis responded to the email acting surprised and asked Defendants' Chief Financial Officer, Athina Staikopoulou to look into the issue (*id.* at ¶¶ 118-119). Plaintiff alleges after sending this e-mail, he was retaliated against by being cut out of weekly management meetings beginning on June 23, 2021 (*id.* at ¶¶ 123-126).

Plaintiff alleges on June 29, 2021, he was summoned to Stoidis' office where Stoidis aggressively questioned him about Plaintiff's email (*id.* at ¶¶ 127-131). Plaintiff alleges on July 13, 2021, Voulgari requested, at the direction of Stoidis, that Plaintiff prepare an all-encompassing report about his first year of employment that discussed business development, client relationships, and other topics (*id.* at ¶¶ 135-139). On July 22, 2021, Plaintiff alleges Defendants notified him

via email that his employment was terminated effective October 21, 2021 (*id.* at ¶ 143). Plaintiff claims Defendants did not provide a reason for his termination (*id.* at ¶ 144). Plaintiff also claims that Defendants denied his requests to use paid time off as retaliation (*id.* at ¶¶ 150-152). Plaintiff alleges that on October 1, 2021, Defendants froze Plaintiff's company credit cards (*id.* at ¶ 153). Plaintiff also alleges that he was not allowed to work from home when he was not feeling well during the height of the Covid-19 pandemic even though other employees frequently were allowed to work from home (*id.* at ¶¶ 155-156).

On September 30, 2021, Defendants allegedly emailed an updated termination letter that stated a deduction in the amount of $3,100.60 would be made from Plaintiff's October 2021 payroll amount to offset Defendants' failure to deduct appropriate taxes (*id.* at ¶ 157). Plaintiff alleges the parties previously agreed to a deduction of $1,550.27, and that Defendants' unilateral deduction is an unlawful deduction in violation of the NYLL (*id.* at ¶¶ 158-159).

The September 30, 2021 email contains a "7L International" header and was signed by Voulgari (NYSCEF Doc. 28). The e-mail instructs Plaintiff to use his paid time off from October 8, 2021 through his termination of October 21, 2021 (*id.*). The email states that Plaintiff was to receive severance in the amount of $29,526.67 as well as October's wages of $5,926.03 (*id.*). The email also states "that in the event that you do not reply to us regarding any objection by end of day, Monday October 4th, 2021, the amounts would be considered final and you officially declare that you have no further claims from the company." (*id.*).

III. Discussion

A. Motion to Dismiss Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and

determine only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). Conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]; *Barnes v Hodge*, 118 AD3d 633, 633-634 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]). In opposing a motion to dismiss for failure to state a claim, a plaintiff may amplify the allegations in the Complaint through affidavits (*Mulder v Donaldson, Lifkin & Jenrette*, 208 AD2d 301, 307 [1st Dept 1995]).

A motion to dismiss based on documentary evidence pursuant to CPLR § 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]). A court may not dismiss a complaint based on documentary evidence unless the factual allegations are definitively contradicted by the evidence (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

A motion to dismiss based on accord and satisfaction or release pursuant to CPLR § 3211(a)(5) requires a clear manifestation of intent by the parties that the payment was made, and accepted, in full satisfaction of the claims (*TIAA Global Investments, LLC v One Astoria Square LLC*, 127 AD3d 75, 90 [1st Dept 2015] citing *Rosenthal v Quadriga Art, Inc.*, 105 AD3d 507, 508 [1st Dept 2013]).

B. Defendants' Motion to Dismiss based on Accord and Satisfaction

Defendants assert that an email to Plaintiff which purportedly stated his severance pay and contained a sentence which stated "in the event that you do not reply to us regarding any objection by end of day, Monday October 4th, 2021, the amounts would be considered final and you officially declare that you have no further claims from the company." (NYSCEF Doc. 28). However, there is no instrument in writing signed by Plaintiff, let alone even a response from Plaintiff which indicates he was releasing all claims. Further, the "company" referred to in the email is ambiguous and unspecified. The e-mail header states the email is coming from 7L International, but does not make clear if "company", which is referred to in the singular, means 7L International Ltd. or 7L International, Inc., both of which are named Defendants. There is similarly no mention of a release of any claims against Defendants Massive Grid Ltd. and Massive Grid Inc. Indeed, according to the employment contract, 7L Internal LTD and Massive Grid LTD were both signatories as "the Company's Affiliates" and yet there is no purported accord and satisfaction on behalf of claims against them (NYSCEF Doc. 29). Further, there is no specificity as to what "claims from the company" the email is referring to, falling far short of the "clear manifestation of intent" required for an accord and satisfaction defense (*TIAA Global Investments, LLC v One Astoria Square LLC*, 127 AD3d 75, 90 [1st Dept 2015] citing *Rosenthal v Quadriga Art, Inc.*, 105 AD3d 507, 508 [1st Dept 2013]).

As Defendants rely on this sole email as their documentary evidence in support of their motion to dismiss, their motion must be denied. Indeed, documentary evidence must be unambiguous, and the e-mail proffered in support of the motion to dismiss contains several ambiguities (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]). A court may not dismiss a complaint based on documentary evidence unless the factual allegations

are definitively contradicted by the evidence (*Leon v Martinez*, 84 NY2d 83, 88 [1994]). Indeed, Plaintiff's mere silence does not constitute a clear manifestation of an intent to release all Defendants here from Plaintiff's numerous statutory and contractual claims (*see Courtney-Clerke v Rizzoli Intern. Publications, Inc.*, 251 AD2d 13 [1st Dept 1998] [mere silence, oversight or thoughtlessness in failing to object insufficient to establish requisite clear manifestation of intent by Plaintiff]). Further, the e-mail makes no mention of Plaintiff's unequivocal intent to waive any of his statutory rights, and therefore the e-mail, for purposes of this motion to dismiss, cannot definitively establish an accord and satisfaction CPLR § 3211(a)(5) defense (*Jacoby and Meyers v Crispi*, 205 AD2d 312 [1st Dept 1994]).

C. Defendants' Motion to Dismiss based on CPLR 3211(a)(7) and NYLL § 191

Defendants also argue in the alternative that Plaintiff has failed to state a claim under NYLL § 191 because he does not fit any of the categories of workers which § 191 is meant to protect. NYLL § 191 protects employees who are (a) manual workers, (b) railroad workers, (c) a commission salesperson, or (d) a clerical and other worker. Plaintiff alleges that he "is not, and was not, an employee who was exempt from the protections of NYLL § 191" (NYSCEF Doc. 16 at ¶ 203). Pursuant to NYLL § 190(7) "clerical and other worker" means all employees who are not manual workers, railroad workers, or commission salesman "except any person employed in a bona fide executive, administrative or professional capacity whose earnings are in excess of nine hundred dollars a week." It is undisputed that Plaintiff earned $100,000.00 annually and therefore earned more than $900.00 a week (NYSCEF Doc. 16 at ¶ 76). It is also undisputed that Plaintiff rendered services as "Vice President of Business Development" (*id.* at ¶ 66). Plaintiff's employment contract also specifically describes him as the "Executive." Simply because Plaintiff was supervised by a Chief Executive and required approval from the Chief Executive does not

mean he is entitled to the protection of NYLL § 191, especially when he otherwise falls within the exception enumerated at NYLL § 190(7) (*see also McDonald v McBain*, 99 AD3d 436, 438 [1st Dept 2012]; *Schuit v Tree Line Management Corp.*, 46 AD3d 405, 405-406 [1st Dept 2007]). Based on the employment contract and Plaintiff's allegations, he is not entitled to the protections of NYLL § 191 and therefore this cause of action is dismissed.

While Plaintiff argues that he does not meet the definition of "executive" or in an "administrative capacity", the Court finds those arguments to be plainly contradicted both by the allegations of the Amended Complaint and the employment contract (*see* 12 NYCRR § 142-2.14; *see also* NYSCEF Doc. 16 at ¶ 12 [where Plaintiff alleges his duties and responsibilities included "identifying business opportunities; building and maintaining successful relationships with prospects and existing clients; collaborating with executives on business strategy to determine objectives; evaluating current business performance; and increasing business reach and potential."]).

D. Defendants' Motion to Dismiss based on CPLR 3211(a)(7) and NYLL § 193

Finally, Defendants move for dismissal of Plaintiff's NYLL § 193 claim. Pursuant to § 193(1)(a), "No employer shall make any deduction from the wages of an employee, except deductions which: are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency". Plaintiff alleges that Defendants' failure to deduct Plaintiff's taxes in a timely manner, and instead deducting the taxes in a gross lump sum constitutes a violation of NYLL § 193 (NYSCEF Doc. 16 at ¶¶ 191-199). Plaintiff also argues that Defendants' failure to pay Plaintiff on a bi-weekly basis constitutes an impermissible deduction under NYLL § 193 (*id.* at ¶¶ 205-206). Because this Court has determined that based on the pleadings, statute,

precedent, and Plaintiff's employment contract he does not state a claim under NYLL § 191, his NYLL § 193 claims connected to the § 191 claims are also dismissed.

As to Plaintiff's § 193 claims related to an unlawful deduction related to his taxes, Defendants argue that because the payroll tax deductions were required by law, there was no "unlawful deduction" within the meaning of § 193. Indeed, as his employer, Defendants were legally obligated to deduct payroll taxes from Plaintiff's paychecks. However, Plaintiff disputes the amount of payroll taxes which Defendants were entitled to deduct. Plaintiff alleges that the parties agreed to deduct on a monthly basis from Plaintiff's future wages $1,550.375 for 12 months beginning in October 2020 (NYSCEF Doc. 16 at ¶¶ 194-195). Plaintiff further alleges, however, that Defendants stated due to their earlier failure to deduct taxes from Plaintiff's wages, $3,100.60 was deducted from Plaintiff's October 2021 payroll amount (*id.* at ¶ 196). Plaintiff claims this unilateral deduction was double the monthly agreed upon deduction and constitutes an unlawful deduction under NYLL § 193 (*id.* at ¶¶ 197-198). The Court finds that whether the $3,100.60 deduction, which was double the agreed upon deduction, was lawful given the payroll taxes which Plaintiff owed is a factual issue which cannot be determined on a pre-answer motion to dismiss. Indeed, this factual issue is better flushed out in discovery and may potentially be resolved on a summary judgment motion. As this is a pre-answer motion to dismiss, the Court must accept the allegations as true, especially when there is no documentary evidence which definitively contradicts Plaintiff's allegations. Therefore, this portion of Plaintiff's motion to dismiss is denied, and Plaintiff's fourth cause of action survives.

Accordingly, it is hereby,

ORDERED that Defendants motion to dismiss is granted only to the extent that Plaintiff's fifth cause of action which alleges violations of New York Labor Law §§ 191 and 193 is denied since Plaintiff is not an employee protected by New York Labor Law § 191; and it is further

ORDERED that Defendants' motion to dismiss is otherwise denied; and it is further

ORDERED that within twenty (20) days of entry of this Decision and Order, Defendants' shall file an Answer to the surviving portions of Plaintiff's Amended Complaint; and it is further

ORDERED that on or before February 9, 2023, the parties shall submit a proposed preliminary conference order by e-mail to SFC-Part33-Clerk@nycourts.gov. In the event the parties are unable to agree to a proposed preliminary conference order, the parties are directed to appear for a preliminary conference in person at 60 Centre Street, Room 442, New York, New York 10007, at 9:30 a.m. on February 22, 2023; and it is further

ORDERED that within ten (10) days of entry, Plaintiff shall serve a copy of this Decision and Order with notice of entry on all parties to this action; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

1/13/2023
DATE

HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	☐	CASE DISPOSED		x	NON-FINAL DISPOSITION	
	☐	GRANTED	☐ DENIED	x	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐ REFERENCE