

Saez v Prado
2023 NY Slip Op 30332(U)
January 26, 2023
Supreme Court, New York County
Docket Number: Index No. 653273/2022
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14

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FRANCISCO A SAEZ, FRANCISCO A SAEZ,

Plaintiff,

- v -

VALDEMAR PRADO, LILLIAN BUCUR, THE WORLD
ASSOCIATION OF THE FORMER UNITED NATIONS
INTERNES AND FELLOWS, INC.,

Defendant.

INDEX NO. 653273/2022

MOTION DATE N/A

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 01, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 75, 78, 82, 84, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107

were read on this motion to/for DISMISS.

Defendants’ motion to dismiss plaintiff’s complaint is denied.

Background

This matter arises out of a derivative action filed by plaintiff, a member of the World Association of the Former United Nations Interns and Fellows, Inc. (“WAFUNIF”). WAFUNIF is an incorporated not-for-profit organization dedicated to promoting “research, information and education at all levels to facilitate improvement in public understanding of the principles, activities and potential of the United Nations.” (NYSCEF Doc. No. 1). Plaintiff was the International Financial Affairs Manager for WAFUNIF, and alleges that he also served as interim president for a period of time. Defendant Valdemar Prado was a researcher for WAFUNIF since 2003. Defendant Lillian Bucur was a project coordinator and researcher since approximately 2014. Plaintiff alleges Bucur and Prado were not members or officers at WAFUNIF.

In December 2017, Prado and Bucur brought a derivative action against then President of WAFUNIF Ibne Hassan alleging improper governance and abuse of process. This action was settled in January 2018 with the parties stipulating that Hassan would relinquish the presidency to Bucur and the officers and directors of WAFUNIF would be suspended from office until the next election of WAFUNIF officers and directors. Additionally, this suspension could be lifted by writing executed by Bucur, which plaintiff alleges Bucur did for Prado. Furthermore, the settlement stipulation provided that Prado and Bucur would manage and restore WAFUNIF's property and finances, control the offices, accounts and assets, enter contracts on behalf of WAFUNIF, conduct legal affairs, and execute all powers necessary or useful for the proper management and governance of WAFUNIF.

In September 2022, plaintiff filed a complaint alleging Prado and Bucur fraudulently procured the settlement and have "utilized WAFUNIF as their private fiefdom," diverting corporate assets and opportunities for personal use and using WAFUNIF's status for personal benefit at the expense of WAFUNIF (NYSCEF Doc. No. 1 at 8). Specifically, plaintiff contends that WAFUNIF purchased PPE products at the onset of the COVID-19 pandemic with the intention of supplying these products to developing countries. Plaintiff alleges that Prado converted the PPE and sold them on the internet, retaining the profit generated by the sales.

Defendants now move to dismiss the complaint. In support of their motion, defendants contend that plaintiff does not possess 5% ownership in WAFUNIF and is not a member of WAFUNIF. Defendants assert that plaintiff never submitted an application to become a member of WAFUNIF and cannot show that he is a former intern or fellow of the U.N. (the basis for becoming a WAFUNIF member). Additionally, defendants contend plaintiff failed to make a

demand on the board prior to filing his complaint, and his reasons for not doing so are inadequate.

Specifically, defendants contend that the majority of the board are not defendants in this action and therefore could have responded to allegations of misconduct made by plaintiff had he attempted to make such allegations in the first place. Defendants further contend because plaintiff is not a member of WAFUNIF and did not make a demand on the board, plaintiff does not have standing to bring this action. Finally, defendants request sanctions against plaintiff claiming his complaint is frivolous and only meant to gain control of WAFUNIF.

In response, plaintiff contends he is a member of WAFUNIF and produced ID badges and an email account indicating he worked for the UN, with his latest ID approved as recently as April 2022. Furthermore, plaintiff contends that at the time he filed the complaint, only Prado and Bucur were on the board, and there were no other directors; otherwise, he asserts, he would have made the demand. Additionally, plaintiff contends he has invested and funded at least \$2,000,000.00 into the operations of WAFUNIF and is a 5% shareholder in WAFUNIF. Plaintiff maintains that he is unable to prove these assertions because the documentation with this information is held by defendants.

Discussion

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the [pleading] as true, accord [the proponent of the pleading] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994] [citations omitted]). “At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration” (*Connaughton v*

Chipotle Mexican Grill, Inc., 29 NY3d 137, 141, 75 NE3d 1159 [2017] [citation and internal quotations omitted]).”

The Court denies defendants’ motion. As an initial matter, it appears the parties cannot come to a consensus on the facts of this case. Plaintiff Saez insists he is a member of WAFUNIF and that he has at least a 5% shareholder ownership. Defendants contend this is not so. Plaintiff states the board only had two members at the time of his complaint, thus his lack of demand. Defendants contend there were at least seven. A disagreement on the facts is not enough to satisfy the requirements for a motion to dismiss, and this Court cannot decide which parties’ assertions are true and which are false. Both parties submit documents to support their contentions, but it is not clear from the documentary evidence that all facts alleged are supported. For example, defendants submitted a *partial* list of WAFUNIF members (NYSCEF Doc. No. 68), while plaintiff showed various press releases indicated he certainly worked for the UN but not necessarily held a position as interim president or has invested over \$2,000,000.00 in WAFUNIF (NYSCEF Doc. No. 99).

Only one thing is readily apparent—more discovery is needed to ascertain the merits of plaintiff’s claims. At this stage of litigation, the Court cannot dismiss plaintiff’s claims nor will it issue sanctions against plaintiff.

Accordingly, it is hereby

ORDERED that defendants’ motion to dismiss plaintiff’s complaint is denied.

Next conference: March 2, 2023 at 10:30 a.m.

By February 23, 2023, the parties shall upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. The Court will then assess

whether a conference is necessary (i.e., if the parties agree, then an in-person conference may not be required).

If nothing is uploaded by February 23, 2023, the Court will adjourn the conference or may order a note of issue be filed.



1/26/2023
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE