SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

----------X

ROB VEL TRADING PTY LIMITED,

Plaintiff,

- v -

JOSEPH LEWIS THOMAS aka "JOE", GERALD ISAAC, GERALD ISAAC MUSIC GROUP MANAGEMENT & SERVICES LLC

Defendant.

----------X

INDEX NO. 654069/2022

MOTION DATE 03/08/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24

were read on this motion to/for DISMISS.

Defendants' motion to dismiss the complaint against defendants Isaac and Gerald Isaac Music Group Management & Services LLC, and to dismiss the second, third and fourth causes of action against defendant Thomas is granted.

Background

This action relates to plaintiff's allegation that defendant Thomas refused to perform (Thomas is an R&B artist) at an event allegedly in violation of an express contractual agreement. Plaintiff maintains that defendant Thomas was hired to perform at a 50th birthday party at a venue in South Africa on July 16, 2022. It argues that Mr. Thomas used his manager, Mr. Isaac, to communicate his demands. These included, among many, many demands, a fee for $75,000 to be paid upfront, first-class travel arrangements for Mr. Thomas and his thirteen-person entourage as well as specific accommodations once in South Africa.

Plaintiff alleges that it ceded to these demands and expended $350,000 to accommodate defendants' conditions. It claims that two days before the event, Mr. Thomas cancelled and claimed that he had tested positive for COVID-19. Plaintiff insists that it demanded proof and Mr. Thomas refused to provide any proof. Plaintiff alleges that Mr. Thomas used this imagined illness as a way to get out of the performance.

Plaintiff contends that because the cancellation was so close in time to the party, it was unable to get refunds on the expenditures it had made to accommodate defendants' demands. Plaintiff argues that defendants have refused to make any reimbursements and only recently returned the $75,000 performance fee. It brings five causes of action: breach of contract against Mr. Thomas and Gerald Isaac Music Group Management & Services LLC (the "LLC"), promissory estoppel against Mr. Thomas and the LLC, unjust enrichment against all defendants, negligent misrepresentation against all defendants, as well as a corporate veil piercing claim against defendant Isaac.

In this motion, defendants seek dismissal of all claims against Mr. Isaac and the LLC as well as dismissal of the second, third and fourth causes of action against Mr. Thomas. They admit that there was a valid contract and so they argue that the quasi-contract theories must be dismissed. Defendants contend that the contract does not list the LLC and so the breach of contract claim against it should be dismissed. Mr. Thomas insists he cancelled because he contracted COVID-19.

In opposition, plaintiff insist that all three defendants bear responsibility for the alleged wrongdoing. It argues that the LLC was a party to the contract and that Mr. Isaac personally negotiated the contract so that he would receive benefits from plaintiff. Plaintiff points out that

the LLC is cited in the preamble to the contract and that Mr. Isaac is hiding behind his company to avoid liability.

In reply, defendants admit that plaintiff has stated a breach of contract against Thomas but argue that the remaining claims must be dismissed. They claim that the LLC has no obligations under the contract or a related rider. Defendants argue that LLC and Mr. Isaac were simply agents negotiating a contract for a disclosed principal (Mr. Thomas). Defendants insist that the promissory estoppel, unjust enrichment, and negligent misrepresentation claims are duplicative of the breach of contract claim.

Discussion

"Under CPLR 3211(a)(7), pleadings are to be afforded a liberal construction, allegations are taken as true, the plaintiff is afforded every possible favorable inference, and a determination is made only as to whether the facts as alleged fit within any cognizable legal theory" (*CSC Holdings, LLC v Samsung Elecs. Am., Inc.*, 192 AD3d 556, 146 NYS3d 17 [1st Dept 2021]).

Breach of Contract

The subject agreement involves two separate parts. The first is a performance agreement in which Mr. Thomas agreed to do the private performance on July 16, 2022 (NYSCEF Doc. No. 14). The second is a performance rider which details the many, many, varied demands from Mr. Thomas, including that plaintiff provide 12 "stagehands," ground transportation, and certain hotel accommodations (NYSCEF Doc. No. 23). The Court finds that both agreements are solely between plaintiff and Mr. Thomas.

The fact that Mr. Thomas chose to have the money sent to the LLC (his agent's company) and the fact that the LLC is mentioned in the preamble are both of no moment. A plain reading of the contract and the rider yields only one conclusion: that Mr. Thomas agreed to do a performance on a certain date and time while plaintiff undertook to perform various tasks in preparation for that performance (as well as pay a specified fee).

"Generally, an agent who acts on behalf of a disclosed principal is not liable for a breach of contract" (*Bank of Am., N.A. v ASD Gem Realty LLC*, 205 AD3d 1, 7, 164 NYS3d 566 [1st Dept 2022]). Here, an artist's manager negotiated an agreement on behalf of his client. That agreement did not create any obligations to be performed by Mr. Isaac or the LLC. And it did not inure to the benefit of Mr. Isaac or the LLC. That Mr. Thomas demanded that he receive 2 hotel suites, including one for Mr. Isaac, does not suddenly make Mr. Isaac a party to the contract. Neither Mr. Isaac nor the LLC were supposed to perform at the party. The Court is unable to find that simply because an artist's manager was heavily involved in negotiations, that somehow means that the manager is potentially liable for the alleged non-performance of the artist based on these allegations. Moreover, there is no evidence that Mr. Isaac or the LLC signed the contract.

Plaintiff's argument that a non-signatory can be bound by a contract is not applicable here. There are not sufficient allegations that the LLC or Mr. Isaac were the alter-ego of plaintiff or intended to be bound by a contract where, again, it simply required plaintiff to perform at a birthday party.

Remaining Causes of Action

The Court finds that the promissory estoppel and negligent misrepresentation claims are duplicative of the breach of contract claim and are dismissed. "[A] a simple breach of contract claim may not be considered a tort unless a legal duty independent of the contract—i.e., one arising out of circumstances extraneous to, and not constituting elements of, the contract itself—has been violated" (*Brown v Brown*, 12 AD3d 176, 176, 785 NYS2d 417 [1st Dept 2004]).

Here, the allegations for these two causes of action reveal that they all relate to obligations imposed on plaintiff by the agreement and the rider. For instance, the promissory estoppel claim contends that plaintiff spent $72,359.55 for flights booked through a travel agency demanded by Mr. Thomas, $4,900 for cancellation of flights deemed unacceptable by Mr. Thomas, $95,000 for accommodations as well as $121,500 for the technical set up for the performance (NYSCEF Doc. No. 1, ¶ 65). These were all part of plaintiff's performance under the contract and did not arise out of an independent legal duty.

The negligent misrepresentation claims also fails as duplicative and for failure to state a cause of action. The misrepresentation, as alleged, was that Mr. Thomas would perform his obligations under the contract. This cause of action also references that plaintiff suffered "significant emotional harm and distress" (*id*. ¶ 81). Of course, plaintiff is a corporation and so it cannot suffer emotional harm and distress. And it appears that these allegations point to a possible negligent (or even intentional) infliction of emotional distress claim, not a negligent misrepresentation claim which, again, is based solely on the fact that Mr. Thomas would do the performance. It is duplicative and it is dismissed.

The Court also dismisses the unjust enrichment claim. "The basis of a claim for unjust enrichment is that the defendant has obtained a benefit which in "equity and good conscience"

should be paid to the plaintiff" (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790, 944 NYS2d 732 [2012]). The allegations here are that defendants improperly retained airline credits (plaintiff points out that defendants made plaintiff book the travel through defendants' preferred travel agency). The Court observes that the breach of contract claim contains an allegation that plaintiff should be reimbursed for the flights. So, if plaintiff is reimbursed for those flights, whether or not defendants have any credit would be immaterial. That renders this claim as duplicative.

The Court also dismisses the fifth cause of action which asserts corporate veil piercing against defendant Isaac. First, alter ego claims are merely theories of recovery. They are not independent causes of action (*2406-12 Amsterdam Assoc. LLC v Alianza LLC*, 136 AD3d 512, 513, 25 NYS3d 167 [1st Dept 2016]). Turning to the merits, there is no basis to find that Mr. Isaac is liable under an alter ego theory. The record before this Court suggests that Mr. Isaac, as Mr. Thomas' agent, negotiated the contract and the rider. That Mr. Isaac made numerous demands on behalf of his client does not support a veil piercing theory. There are no allegations that the corporate form was not respected.

Accordingly, it is hereby

ORDERED that defendants' motion is granted and all claims against defendant Gerald Isaac and Gerald Isaac Music Group Management & Services LLC are severed and dismissed and the second, third and fourth causes of action against defendant Thomas are severed and dismissed, and the remaining defendant is directed to answer pursuant to the CPLR.

Conference as to Remaining Parties: June 8, 2023 at 12 p.m. By June 1, 2023, the parties are directed to upload 1) a discovery stipulation signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute concerning discovery or 3) letters explaining why

no agreement could be reached. Based on these submissions, the Court will assess whether an in-person conference is required. The failure to upload anything by June 1, 2023 will result in an adjournment of the conference.

3/10/2023
DATE

ARLENE P. BLUTH, J.S.C.

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