

Blackstone Tech. Group, Inc. v Moll

2023 NY Slip Op 31603(U)

May 10, 2023

Supreme Court, New York County

Docket Number: Index No. 650858/2023

Judge: Barry Ostrager

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

-----X
BLACKSTONE TECHNOLOGY GROUP, INC.

Plaintiff,

- v -

BRYAN CHRISTOPHER MOLL, BKR STRATEGY GROUP, LLC, and BRAND AMBASSADORS CORP.,

Defendants.

INDEX NO.	650858/2023
MOTION DATE	
MOTION SEQ. NO.	001

DECISION + ORDER ON MOTION

HON. BARRY R. OSTRAGER

Before the Court is a motion for summary judgment in lieu of complaint by plaintiff Blackstone Technology Group, Inc. (“Blackstone”) for a money judgment in the amount of \$550,000.00, plus interest, costs and disbursements, jointly and severally against defendants Bryan Christopher Moll, BKR Strategy Group, LLC, and Brand Ambassadors Corp. (collectively, “Defendants”) based on the terms of a Settlement Agreement and Release (NYSCEF Doc. No. 4). Defendant Bryan Christopher Moll was personally served with the moving papers on March 11, 2023 (NYSCEF Doc. No. 10). On the same date, defendant BKR Strategy Group, LLC was served by personal delivery of the papers to Mr. Moll as the Registered Agent and Chief Executive Officer of the limited liability company (NYSCEF Doc. No. 12), and defendant Brand Ambassadors Corp. was similarly served by delivery of the papers to Mr. Moll as Chief Executive Officer of the corporation (NUSCEF Doc. No. 11). At the request of the Court, based on a briefing schedule set by the Referee in the Submissions Part, Blackstone’s counsel confirmed that he had not received any communication from any of the Defendants following service (NYSCEF Doc. Nos. 13-19). Defendants have not efiled any opposition. Therefore, the Court is considering this motion on default.

Blackstone has established its right to the requested relief. In support of the motion, Blackstone has submitted an Affidavit from Christopher Ryan, the attorney who represented Blackstone in the underlying transaction and who has personal knowledge of the facts through his representation and his review of Blackstone's books and records (NYSCEF Doc. No. 3). According to the Ryan Affidavit, On December 1, 2021, Blackstone initiated arbitration against Defendants under the Commercial Rules of Arbitration of the American Arbitration Association ("AAA") alleging that Defendants had breached a Contractor Agreement for certain recruitment and management services that Blackstone had agreed to provide in exchange for payment (NYSCEF Doc. No. 5). Blackstone claimed in the Demand for Arbitration that Defendants had failed to pay for the services rendered. Defendants counterclaimed that Blackstone had tortiously interfered with a contract between Defendants and Major League Baseball ("MLB") and that Blackstone had also breached the Contractor Agreement by failing to provide all services outlined in the Contractor Agreement and by interfering with Defendants' business relationship with MLB.

On October 12, 2022, the parties executed a Settlement Agreement and Release resolving all the claims and counterclaims raised in the Arbitration (NYSCEF Doc. No. 4). Pursuant to that Settlement Agreement, Defendants agreed to pay Blackstone the sum of \$450,000.00, with \$300,000.00 to be paid on November 15, 2022 and \$150,000.00 to be paid on December 15, 2022. Defendants further agreed in ¶ 3 that in the event Defendants failed to meet any payment obligation set forth in the Settlement Agreement, an Additional Payment of \$100,000.00 would become "immediately due and payable". On that same date, Defendants executed a Confession of Judgment for the \$450,000.00 due under the Settlement Agreement, plus the \$100,000.00 Additional Payment that would be due if either of the two settlement payments were not paid. (The Confession of Judgment is attached to the Settlement Agreement as Exhibit C).

According to the Ryan Affidavit, Defendants failed to make its first payment of \$300,000.00 due on November 15, 2022 or the second payment of \$150,00.00 due on December 15, 2022. Counsel advised Defendants of each default, but no payments were made, leaving a balance due of \$550,000.00, which includes the Additional Payment. In addition to a judgment for that amount, Blackstone seeks 9% interest pursuant to CPLR §§ 5001 and 5004 on the \$400,000.00 owed as of November 16, 2022 and the \$150,000.00 owed as of December 16, 2022.

CPLR § 3213 permits a plaintiff to move for summary judgment in lieu of complaint “[w]hen an action is based upon an instrument for the payment of money only.” The Settlement Agreement, with its corresponding Confession of Judgment, is an instrument for the payment of money only within the meaning of CPLR § 3213. *See e.g., Tongkook Am. v Bates*, 295 AD2d 202 (1st Dep’t 2002) (granting summary judgment in lieu of complaint, finding that the settlement agreement constituted an “instrument for the payment of money only” and that plaintiff had “made out a prima facie case by poof of the instrument and defendants’ failure to make payment required pursuant thereto”); *J.D. Structures v Waldbaum*, 282 AD2d 434, 436 (2d Dep’t 2001) (granting summary judgment in lieu of complaint where the plaintiff had “established that the [defendants] failed to make the payments required by the settlement agreement, which is an instrument for the payment of money only”).

Blackstone also asks for an inquest to set the amount of attorney’s fees to which Blackstone claims it is entitled. Paragraph 17 of the Settlement Agreement states that:

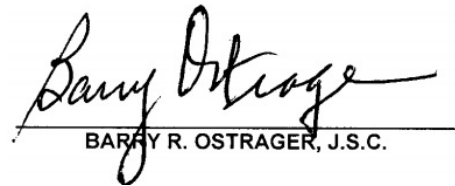
The Parties do hereby agree that, in any action to enforce the terms of this Settlement Agreement, in addition to any other relief to which it may be entitled, the prevailing party shall be entitled to recover its legal costs and expenses, including reasonable attorney fees incurred at any stage or level of proceeding, trial, or appeal.

There can be no dispute that Blackstone is the prevailing party here. Under all the circumstances and based on the significant experience of the Court, the Court awards Blackstone \$10,000.00 for reasonable attorney’s fees in lieu of holding an inquest.

Accordingly, it is hereby

ORDERED that plaintiff’s motion is granted, and the Clerk is directed to enter judgment in favor of BLACKSTONE TECHNOLOGY GROUP, INC. against defendants BRYAN CHRISTOPHER MOLL, BKR STRATEGY GROUP, LLC, and BRAND AMBASSADORS CORP., jointly and severally, in the amount of \$550,000.00 plus interest at the statutory rate of 9% per annum, as calculated by the Clerk of the Court pursuant to CPLR §§ 5001 and 5004, on the \$400,000.00 payment due as of November 16, 2022 and the \$150,000.00 due as of December 16, 2022, plus an additional \$10,000.00 for attorney’s fees plus interest at the statutory rate of 9% per annum as of February 15, 2023, when this motion was made, plus costs and disbursements as taxed by the Clerk of the Court upon plaintiff’s e filing of a Proposed Judgment and Bill of Costs directed to the County Clerk.

Dated: May 10, 2023


BARRY R. OSTRAGER, J.S.C.

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