

**MD25 Entertainment, LLC v Redwood Music Group,
Inc.**

2023 NY Slip Op 31894(U)

June 5, 2023

Supreme Court, New York County

Docket Number: Index No. 652633/2022

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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MD25 ENTERTAINMENT, LLC, JOHN VELASCO, MARC
JACOBSON, PC, MARC JACOBSON,

Plaintiff,

INDEX NO. 652633/2022

MOTION DATE 05/30/2023

MOTION SEQ. NO. 003 004

- v -

REDWOOD MUSIC GROUP, INC., REDWOOD
ENTERTAINMENT, INC., REDWOOD MUSIC
INTERNATIONAL, LLC, REDWOOD ROYALTY
MANAGEMENT, LLC, REDWOOD ROYALTY FUND GP
LLC, REDWOOD MUSIC ROYALTY FUND LP, CAROL
GREEN, JEROME EISNER

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 49, 50, 51, 52, 53, 54, 55, 57, 59, 60, 61, 65, 67

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 40, 41, 42, 43, 44, 45, 46, 47, 58, 62, 63, 64, 66, 68, 69, 70, 71, 72

were read on this motion to/for DISMISS.

Motion Sequence Numbers 003 and 004 are consolidated for disposition. Defendant Jerome Eisner’s motion (MS003) to dismiss the amended complaint is granted. Defendant Carol Green’s motion (MS004) to dismiss is granted in part and denied in part.

Background

Plaintiffs contend that defendants fraudulently induced them to provide goods and services to defendants as part of an effort to build a music industry company without paying for these services. They maintain that defendants allegedly sought to create a music company that

included record companies, music publishing, a fund to purchase additional music publishing, divisions for management and touring as well as a merchandising arm.

Plaintiffs argue that defendants presented this vision and convinced them to enter into two agreements. The first, dated July 17, 2021, involved plaintiff Velasco's employment agreement with defendant Redwood Music Group, Inc. to be this entity's president (NYSCEF Doc. No. 51). Plaintiffs maintain that Redwood Music Group, Inc. does not exist and therefore, defendant Green (who signed the agreement on this entity's behalf) is personally liable for the obligations under the agreement.

In August 2021, plaintiffs argue that plaintiff Marc Jacobson, P.C. entered into a retainer agreement with Redwood Entertainment, LLC for legal services (NYSCEF Doc. No. 52). They maintain that Redwood Entertainment, LLC does not exist either. Plaintiffs maintain that they sent regular invoices to defendant Green for work completed in accordance with the agreements and only a few payments were made.

They allege that defendant Green is a managing member of the Redwood defendants and signed the agreements on behalf of these entities. Plaintiffs contend that defendant Eisner is the accountant for these entities and for defendant Green as well as the CFO for the Redwood defendants. They detail that defendant Eisner allegedly told defendant Green not to sell securities in order to raise capital for the Redwood defendants and that this violated his fiduciary duties to the Redwood defendants. Plaintiffs bring nine causes of action relating to the alleged breach of these agreements as well as the purported fraud committed by defendants.

MS003

In motion sequence 003, defendant Eisner moves to dismiss the amended complaint against him. He claims that the cause of action for fraud should be dismissed because it is

duplicative of the breach of contract claim against the corporate defendants. Eisner argues that the fraud claims are not pled with the requisite particularity. He also argues that the claim for tortious interference with contractual relations should be dismissed because he cannot be held individually liable for contracts of the Redwood defendants.

Eisner emphasizes that this entire business venture was reliant upon raising money from outside sources and plaintiffs were well aware that there would not be, at least initially, money to pay them. He also claims that to the extent the sixth cause of action for quantum meruit is alleged against him, he insists that such a claim must be dismissed because he never entered into a contract with any of the plaintiffs.

In opposition, plaintiffs contend that Eisner made a series of misrepresentations to induce plaintiffs to continue working for the corporate defendants. They claim he insisted that defendant Green would invest millions into the Redwood defendants and that payments would be made in full in order to keep plaintiffs working for free. Plaintiffs contend that they never knew if Eisner was working as defendant Green's accountant or in his role for the corporate defendants.

Plaintiffs maintain that the fraud claim was properly pled and it is not duplicative of the contract claim. They point out that their theory is that Eisner misrepresented their ability to perform under the contract in order to extract plaintiff's performance without any compensation. Plaintiffs also argue that defendant Eisner promised that Green would sell stock, loan the proceeds of those sales to the corporate defendants, and use that money to pay plaintiffs that constitute the fraud at issue here.

Plaintiffs maintain that their claim for interference with contractual relations should remain because it is unclear whether Eisner was acting in his fiduciary capacity to Green or to the corporate defendants.

In reply, Eisner argues that the fraud claim is duplicative of the breach of contract claim. He insists plaintiffs did not cite any duties collateral to the parties' agreements and that he had nothing to do with Green's alleged promises to sell stock to fund the corporate defendants' activities.

"The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages" (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559, 883 NYS2d 147 [2009]). "A fraud-based claim is duplicative of breach of a contract claim when the only fraud alleged is that the defendant was not sincere when it promised to perform under the contract" (*MMCT, LLC v JTR Coll. Point, LLC*, 122 AD3d 497, 499, 997 NYS2d 374 [1st Dept 2014] [internal quotations and citation omitted]).

The Court grants this branch of the motion as the allegations for this cause of action against Eisner are that defendants simply failed to perform under the contracts. The allegations (at pages 12-21 of the amended complaint) contend that Eisner made many representations that the corporate defendants would perform under the contract. That they allegedly did not do so does not transform that breach into fraud. Eisner's alleged representations about how Green would raise the funds—by selling stocks—also does not constitute fraud. Plaintiffs cannot state a cognizable claim for fraud based solely on the fact that defendants did not perform under the contract.

The Court also grants the branch of the motion to dismiss the tortious interference with contract claim. "The elements of a tortious interference with contract claim are well established—the existence of a valid contract, the tortfeasor's knowledge of the contract and

intentional interference with it, the resulting breach and damages” (*Hoag v Chancellor, Inc.*, 246 AD2d 224, 228, 677 NYS2d 531 [1st Dept 1998] [citation omitted]).

Here, Eisner allegedly had an official role with the corporate defendants and so plaintiffs had to properly plead how Eisner can be personally liable under these circumstances. Assuming the allegations in the complaint are true, as the Court must on a motion to dismiss, plaintiffs did not sufficiently plead a cognizable claim against Eisner.

“[I]t should be emphasized that the existence of a plausible claim for breach of contract does not, without more, provide a basis for the assertion of a cause of action for interference with contractual relations against those corporate officers and directors whose actions brought about the asserted breach. The legal distinction drawn between a corporation and those who administer its affairs is a matter of sound public policy” (*Joan Hansen & Co., Inc. v Everlast World's Boxing Headquarters Corp.*, 296 AD2d 103, 108-09, 744 NYS2d 384 [1st Dept 2002]).

Simply because Eisner may have instructed Green not to sell securities that would, in theory, have resulted in the corporate defendants’ ability to pay plaintiffs does not state a valid theory for Eisner’s personal liability. Plaintiffs’ discussion about the potential conflict of interest between Eisner’s role as a fiduciary both for the corporate defendants and for Green does not state a basis upon which plaintiffs can recover. Plaintiffs do not purport to bring derivative claims on behalf of the corporate defendants nor can they bring claims on behalf of Green.

To the extent that plaintiffs raise issues about Eisner’s alleged conflict and the rules governing practice before the Internal Revenue Service, the Court finds that those issues do not state a basis upon which plaintiffs have standing to seek damages.

The Court dismisses the sixth cause of action for quantum meruit as plaintiffs did not oppose that relief in their opposition.

MS004

In this motion, defendant Green seeks to dismiss the first, second, third, fifth, sixth, seventh and eighth claims against her.

Green makes three broad arguments to dismiss. She insists that the cause of action for fraud should be dismissed because it is duplicative of the breach of contract claim, that the breach of contract claims should not lie against her because she did not enter into the two subject agreements and the claims for quantum meruit and account stated should be dismissed because they are duplicative of the breach of contract claims.

Breach of Contract Claims

Green seeks to dismiss the first and fifth causes of action. The first seeks a breach of contract with respect to the Velasco agreement while the fifth seeks a breach of contract concerning the retainer agreement. She maintains that both agreements were with Redwood entities and not her with in her individual capacity.

Plaintiffs maintain that the very existence of these agreements suggest that Green should be held personally liable because they insist these were phony entities.

The Court dismisses these causes of action as against Green. Plaintiffs did not raise an issue of fact to be explored in discovery and there is no dispute that Green did not sign these agreements in her individual capacity (*see* NYSCEF Doc. Nos. 43 and 44).

That they insist that these entities were phony or non-existent does not state a basis upon which plaintiffs could seek to enforce a contract against Green. The Court observes that plaintiffs did not make an alter-ego or corporate veil piercing argument, although the Court makes no finding about whether such allegations could preserve these causes of action.

Similarly, the Court dismisses the account stated cause of action as against Green as she was not a party to that contract.

Quantum Meruit

“[T]o establish a claim in quantum meruit, a claimant must establish (1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services” (*Caribbean Direct, Inc. v Dubset, LLC*, 100 AD3d 510, 511, 954 NYS2d 66 [1st Dept 2012] [internal quotations and citations omitted]).

The Court denies the branch of the motion that seeks to dismiss this claim. Plaintiffs’ theory is that the Redwood entities were fictitious and so, if that turns out to be true, then Green procured services for her benefit. In other words, if plaintiffs can prove that Green received the benefit of the work performed by plaintiff (because the Redwood entities do not exist), then she might be liable under this theory.

Green’s argument that this is duplicative of the breach of contract claims is without merit because the Court has dismissed those claims against Green. Green cannot have it both ways; she cannot insist that the breach of contract claims cannot be pursued against her and then insist that those claims render this cause of action as duplicative.

Fraud

“The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages” (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559, 883 NYS2d 147 [2009]). “A fraud-based claim is duplicative of breach of a contract claim when the only fraud alleged is that the defendant was not sincere when it promised to perform under the contract”

(*MMCT, LLC v JTR Coll. Point, LLC*, 122 AD3d 497, 499, 997 NYS2d 374 [1st Dept 2014] [internal quotations and citation omitted]).

The Court denies the branch of Green's motion to dismiss this cause of action at this stage of the case. Plaintiffs pleaded fraud with the requisite particularity that Green induced defendants to enter into agreement with non-existent entities and made lots of other promises about what she was going to do with this business. These promises, at least as detailed in the allegations in the amended complaint, are not duplicative of the breach of contract. Green did not merely intend to ensure that the Redwood defendants breached the two agreement; rather, she allegedly made a series of promises that might set forth a fraudulent scheme. The Court finds it is simply premature to dismiss this claim.

Summary

The Court emphasizes that on a motion to dismiss, plaintiffs did not have to prove their claims against Green. They merely had to state cognizable causes of action and the Court finds that they did so here, at least for the claims that survive.


The Court recognizes that defendants' position is that Green merely signed agreements with entities and, therefore, plaintiffs must seek remedies against those corporations. But plaintiffs' theory, which must be taken as true at this stage of the litigation, is that Green induced plaintiffs to sign agreements with sham entities. If that is true (and the Court makes no finding about that now), then Green cannot insulate herself by claiming that plaintiffs are stuck with seeking relief against these non-existent entities. Discovery is needed to explore the exact status of the Redwood defendants and what Green knew about their status as plaintiffs entered these agreements.

Accordingly, it is hereby

ORDERED that defendant Eisner’s motion (MS003) to dismiss the amended complaint is granted and the Clerk is directed to enter judgment in favor of this defendant and against plaintiffs along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that defendant Green’s motion to dismiss (MS004) is granted only to the extent that the breach of contract claims (first and fifth) and the account stated (seventh) cause of action are severed and dismissed and denied with respect to the remaining claims and this defendant shall answer pursuant to the CPLR.

Conference: August 3, 2023 at 11:30 a.m. By July 27, 2023, the parties are directed to upload 1) a discovery stipulation signed by all remaining parties, 2) a stipulation of partial agreement about discovery that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. Based on these submissions, the Court will assess whether an in-person conference is required. The failure to upload anything by July 27, 2023 will result in an adjournment of the conference.

<p>6/5/2023</p> <hr/> <p>DATE</p>		 <hr/> <p>ARLENE P. BLUTH, J.S.C.</p>
<p>CHECK ONE:</p>	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED
<p>APPLICATION:</p>	<input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT
<p>CHECK IF APPROPRIATE:</p>		<input checked="" type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE