

Best Work Holdings (N.Y.) LLC v Ma

2023 NY Slip Op 31932(U)

June 7, 2023

Supreme Court, New York County

Docket Number: Index No. 654826/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14

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BEST WORK HOLDINGS (NEW YORK) LLC,

Plaintiff,

- v -

JIA IVY MA, YUN TOMMY LI

Defendant.

INDEX NO. 654826/2022

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

-----X

HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 15, 20, 23

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 13, 14, 16, 21, 22

were read on this motion to/for DISMISS.

Motion sequence numbers 001 and 002 are consolidated for disposition. Defendants’ motions to dismiss are denied.

Background

Plaintiff, a wholly owned subsidiary of Fang Holdings, Ltd. (“Fang”), owns a 19-story building located at 72 Wall Street in downtown Manhattan. Ma admits that she worked for both Fang and plaintiff during the relevant time(NYSCEF Doc. No. 7, ¶ 3); she was allegedly in charge of a renovation project on the building. Defendant Li allegedly held himself out as a contractor providing construction work on the building.

This case arises out of an alleged fraud. Plaintiff alleges that defendants created fake contracting companies and submitted invoices related to the renovation of plaintiff’s building.

According to plaintiff, Li created companies with similar names to contractors who actually did work. Li submitted these fraudulent invoices to Ma who then approved them and wired payments to a bank account that was attached to Li's business entity.

Defendants now move for dismissal of the complaint. MS001, submitted by Ma, contends the complaint should be dismissed because it does not include an indispensable party, her employer Fang Holdings Ltd. Additionally, Ma argues the claims for fraud do not adequately allege justifiable reliance, claiming Ma acted less like a manager and more like a "messenger" to the management head that was actually approving the invoices. Finally, Ma asserts the enrichment claim should be dismissed as it is duplicative of the fraud claim alleged by plaintiff.

In his motion to dismiss, MS002, co-defendant Li contends that plaintiff did not plead fraud with enough particularity. Li argues that inclusion of specific times and places is necessary to sustain a cognizable claim for fraud. Li further asserts that the unjust enrichment claim is duplicative of the fraud claim, and that the relationship between Li and plaintiff is too attenuated as there is no allegation that Li's companies did any work for plaintiff.

In opposition to both motions, plaintiff argues the unjust enrichment claim is not duplicative and is sufficiently pled. According to plaintiff, if it cannot prove its fraud claim, it is allowed to establish that the defendants received a benefit that should be returned to plaintiff. Plaintiff contends that Fang is not an indispensable party as complete relief may be accorded without joinder of Fang. Additionally, it insists that the complaint adequately pleads justifiable reliance as Ma acted as more than a mere messenger and that her self-serving affidavit suggesting otherwise is not dispositive on a motion to dismiss. In any event, plaintiff argues that justifiable reliance is a factual event that cannot be resolved at the motion to dismiss stage.

In reply, Ma asserts that the affidavit she provided is appropriate for establishing that plaintiff has no legitimate cause of action. Additionally, Ma maintains that there is no reasonable reliance by plaintiff on Ma's alleged misrepresentations; Ma argues that she relied on the invoices submitted by contractors and she approved them in good faith. Further, Ma argues that the unjust enrichment claim must be dismissed as there is no evidence of how Ma was enriched by plaintiff nor is there any evidence that Ma received any money from plaintiff. Finally, Ma contends that Fang is an indispensable party as Ma reported directly to the head of asset management at Fang.

In reply to plaintiff's opposition, Li maintains that the fraud claim is inadequately pled and falls short of the pleading standards required for a fraud cause of action. Li claims that plaintiff did not clarify the existence of a relationship between plaintiff and Li and argues that the unjust enrichment claim is duplicative of the fraud claim and should be dismissed as it arises from the same facts alleged.

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 complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994]).

Fraud

A Court considering a motion to dismiss for failure to state a cause of action “must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference. We may also consider affidavits submitted by plaintiffs to remedy any defects in the complaint” (*Chanko v American Broadcasting Companies Inc.*, 27 NY3d 46, 52, 29 NYS3d 879 [2016]).

“The elements of a cause of action for fraud are a representation concerning a material fact, falsity of that representation, scienter, reliance and damages” (*Stuart Silver Assocs., Inc. v Baco Dev. Corp.*, 245 AD2d 96, 98, 665 NYS2d 415 [1st Dept 1997]).

Plaintiff has adequately stated a cause of action for fraud. Plaintiff alleges that Ma and Li conspired and concocted a plan to create fake companies and submit fraudulent invoices seeking hundreds of thousands of dollars. Contrary to Li’s argument, plaintiff gave specific months and years when the alleged fraudulent conduct occurred and even detailed the phone numbers, addresses, and bank account numbers of the fictitious companies. The complaint is specific enough to pinpoint that Ma processed the invoices for her employer and Li created these allegedly fake companies and submitted those invoices for payment. There is no question as to what plaintiff is alleging and against whom.

Defendants did not establish as a matter of law that plaintiff failed to adequately plead justifiable reliance. Ma worked for plaintiff’s owner and allegedly had a high enough position that she was entrusted by plaintiff with sufficient authority to pull off this purported scheme. Plaintiff contends that she held a managerial position such that plaintiff relied upon her to manage the building project. Moreover, there is sufficient evidence of a relationship between plaintiff and Li—plaintiff allegedly made payments to Li arising out of the alleged fraud.

Necessary Party

The Court finds that Fang is not a necessary party as complete relief may be awarded without Fang. Plaintiff did not allege that Fang participated in or knew about the alleged fraud. Just because Ma worked for Fang, plaintiff's parent company, does not prevent plaintiff from bringing the instant action. Plaintiff's allegations detail how it was damaged by Ma's alleged fraudulent scheme. That Ma may think Fang should be a party to this case does not satisfy her burden to show Fang is a necessary party.

Unjust Enrichment

"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. In a broad sense, this may be true in many cases, but unjust enrichment is not a catchall cause of action to be used when others fail. It is available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff. Typical cases are those in which the defendant, though guilty of no wrongdoing, has received money to which he or she is not entitled. An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim" (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790, 944 NYS2d 732 [2012]).

The Court finds that the unjust enrichment claim is not duplicative of plaintiff's fraud claim. Of course, these two causes of action entail different elements that plaintiff must prove in order to meet its burden. For instance, if plaintiff cannot prove all the elements of fraud, it might be able to successfully show that defendants were unjustly enriched by receiving payment for work they never performed.


Accordingly, it is hereby

ORDERED that the motions by defendants (MS001 and MS002) to dismiss plaintiff's complaint are denied and defendants are directed to answer the complaint pursuant to the CPLR.

A preliminary discovery conference is scheduled in this matter for July 12, 2023 at 10:00 a.m.

By July 5, 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 July 5, 2023, the Court will adjourn the conference.

<u>6/7/2023</u> 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
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE