SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK **PART** 11M

Justice

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ANOOP KANTHAN,

Plaintiff,

- v -

TAGSTONE TECHNOLOGY, LLC,MUTHLA AL SAYER, TAGSTONE TECHNOLOGY CO., TAGSTONE TECHNOLOGIES L.L.C., MUTHLA ALSAYER

Defendant.

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INDEX NO. 652254/2022

MOTION DATE 06/14/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is adjudged that the motion to dismiss is granted in its entirety.

Facts

Plaintiff brought this action against defendants, claiming he provided professional service as required by an oral agreement but received nothing in return. The complaint raised four counts and alleged breach of oral contract, unjust enrichment, breach of settlement agreement and violation of New York Labor Law. Only defendant MUTHLA AL SAYER appeared in this action and filed the instant motion to dismiss all claims pursuant to CPLR § 3211(a)(1) & (a)(7), claiming there was no oral agreement or settlement between the parties, the unjust enrichment is duplicative of the breach of contract claim and the New York Labor Law is misused as the foundation of the claims. Plaintiff disagrees. The court will discuss the merits of each claim in the following analysis.

Motion to dismiss general standard

On a motion to dismiss the court "merely examines the adequacy of the pleadings", the court "accept as true each and every allegation made by plaintiff and limit our inquiry to the legal sufficiency of plaintiff's claim." *Davis v Boeheim*, 24 N.Y.3d 262, 268 (internal citations omitted).

CPLR § 3211(a)(1)

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 N.Y.2d 83, 88 (emphasis added). "[S]uch motion may be appropriately granted only where the documentary evidence *utterly refutes* plaintiff's factual allegations." *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314, 326 (emphasis added). A paper will qualify as "documentary evidence" only if it satisfies the following criteria: (1) it is "unambiguous"; (2) it is of "undisputed authenticity"; and (3) its contents are "essentially undeniable". *VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 A.D.3d 189, 193 [1st Dept 2019].

CPLR § 3211(a)(7)

"In assessing a motion under CPLR 3211 (a) (7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" *Leon v. Martinez*, 84 N.Y.2d 83, 88. "What the Court of Appeals has consistently said is that evidence in an affidavit used by a defendant to attack the sufficiency of a pleading "will seldom if ever warrant the relief [the defendant] seeks unless [such evidence] establish[es] conclusively that plaintiff has no cause of action". *Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 A.D.3d 128, 134 [1st Dept 2014].

Discussion

Since plaintiff is suing former employers for back pay, the threshold issue here is to ascertain the employer(s).

In the verified amended complaint, plaintiff claims he worked for two employers from 2015 to 2019: from 2015 to February 2018, he worked for Tagstone Technology Co., from March 2018 to 2019 he worked for Tagstone Technologies L.L.C. NYSCEF Doc. No. 25, ¶ 11-12. The court finds the allegation in contradiction to the record.

The employment contract and job offer submitted by defendant unambiguously show that from March 2018 to 2019 he was hired by Tagstone Technoligies LLC, a limited liability company established in Abu Dhabi. Both the contract and the job offer were signed by plaintiff and the contract bears the seal of the Ministry of Human Resources of UAE. NYSCEF Doc. No. 23. Plaintiff did not contest the veracity of both documents but argued that Technoligies is a misspelling of Technologies and plaintiff worked for Tagstone Technologies L.L.C. NYSCEF Doc. No. 40, page 3. The court disagrees and finds the argument unavailing.

First, Tagstone Technoligies LLC is an entity that still existed in May 2019, a fact supported by the commercial license issued by the Department of Economic Development in Abu Dhabi. NYSCEF Doc. No. 17. The license bears the same establishment number, 813592, as the one that shows up in the contract. Ironically, the license was uploaded to NYSCEF by plaintiff.

Second, the Memorandum of Association uploaded by plaintiff did not prove anything other than that another entity called Tagstone Technologies L.L.C. was founded on a certain date. There is no proof that Tagstone Technologies L.L.C. and Tagstone Technoligies LLC are the same entity with different names, or the former company has ever changed its name, as argued by plaintiff. NYSCEF Doc. No. 40, page 3. Accordingly, the court treats Tagstone Technologies

L.L.C. and Tagstone Technoligies LLC as two different entities, and plaintiff was hired by Tagstone Technoligies LLC from March 2018 to 2019, not by Tagstone Technologies LLC.

Since the employer Tagstone Technoligies LLC is not a party to the present suit, the court would not consider whether Ms. Alsayer, as a partner in that company, is an "employer" defined by the New York Labor Law. The issue becomes moot here. NYSCEF Doc. No. 17.

Breach of Oral Contract (The Third Cause of Action)

The court now turns to Tagstone Technology Co. and Muthla Alsayer, the alleged employer hiring plaintiff from 2015 to February 2018. Plaintiff submits no written contract to prove the employment relationship but argues that an oral contract was formed between the parties from 2017 to 2019. Plaintiff pled a breach of contract claiming that he "has complied with the Oral Contract and provided services to Defendants from 2017 to 2019. However, Defendants have failed to pay Plaintiff as agreed." NYSCEF Doc. No. 25, ¶ 29-30.

"Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking by its terms is not to be performed *within one year from the making thereof* …" General Obligations Law § 5-701(a)(1).

The New York Statute of Frauds provides that an oral contract is void if performance of which cannot be completed within one year of the date of agreement. Here, plaintiff allegedly negotiated with defendants a multi-year service contract under which he delivered professional service for two years in exchange for wages and bonuses. The oral agreement cannot be performed within one year. "Oral assurances of a five-year term of employment, *even if established*, are void and unenforceable under the statute of frauds." *Cunnison v Richardson Greenshields Secur., Inc.*, 107 AD2d 50, 50 [1st Dept 1985]. "To be enforceable, a promise or agreement of employment for

five years—which by its terms cannot be performed within one year—*must be memorialized in a writing signed by the party to be charged*." *Id.* (emphasis added).

Nothing in the records shows that this is an at-will oral contract with an indefinite term. So, plaintiff cannot rely on this exception to take the contract out of the operation of the statute of frauds. The oral agreement is so vague that the court cannot even tell what service is negotiated for the cash compensation. Accordingly, the third cause of action must be dismissed pursuant to CPLR § 3211(a)(5) because it is barred by the statute of frauds and thus not enforceable.

Unjust Enrichment (The Second Cause of Action)

The unjust enrichment must be dismissed as duplicative of the contract claim because a "claim for unjust enrichment sounds in quasi contract and will be held fatally defective on its face, where the claim is duplicative of a breach of contract cause of action, and the dispute is governed by an express contract. 'The existence of an express agreement, *whether oral or written*, governing a particular subject matter *precludes recovery in quasi contract* for events arising out of the same subject matter.'" *Gottbetter v Crone Kline Rinde, LLP*, 61 Misc 3d 1214[A], 2018 NY Slip Op 51517[U], *2 [Sup Ct, NY County 2018]. Here, the unjust enrichment and breach of contract claims arise out of the exact same subject matter: the allegedly unpaid compensation for the service delivered. And the unjust enrichment claim asks for the exact same damages as that for the contract claim: $977,171 as the back pay. Therefore, it must be dismissed as a duplicative claim. NYSCEF Doc. No. 25, ¶ 34.

Breach of Settlement Agreement and New York Labor Law Claims (The First and Fourth Causes of Action)

Plaintiff uploaded a Share Transfer Agreement between defendant Muthla Al Sayer and Plaintiff Anoop Kanthan trying to frame the share transfer as a settlement of the back pay dispute.

NYSCEF Doc. No. 28. But the problem is nothing in the share transfer agreement says anything about the settlement, the acknowledgement of the back pay or the employment relationship between plaintiff and defendants. Presenting this share transfer agreement alone cannot even prove a breach exists. Therefore, the fourth claim must be dismissed pursuant to CPLR § 3211(a)(7) for failure to state a cause of action.

Since the oral agreement between plaintiff and defendants are not enforceable and the contracting party for the second job is not listed as defendant, the court needs not reach the substance of the first claim, which is to establish the legal foundation for the claims. Based on the foregoing, it is hereby

ADJUDGED that defendant Muthla Al Sayer's motion to dismiss is granted in its entirety pursuant to CPLR § 3211(a)(1), (a)(5) & (a)(7); and the Clerk of the Court is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

ORDERED that the Clerk of the Court shall enter judgment accordingly.

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6/16/2023
DATE

LYLE E. FRANK, 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