

Seidelman v Francis

2023 NY Slip Op 32096(U)

June 23, 2023

Supreme Court, New York County

Docket Number: Index No. 653412/2022

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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CAROLE SEIDELMAN,

Plaintiff,

- v -

QUANDA FRANCIS, TODD A. FRANCIS, SYKES CAPITAL MANAGEMENT

Defendant.

-----X

INDEX NO. 653412/2022

MOTION DATE 03/10/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for DISMISS

This action arises out of allegations of breach of contract, fraud, and conversion relating to a contract to provide signatures for plaintiff's political campaign. Defendants now move to partially dismiss the complaint pursuant to CPLR § 3211(a)(7) and to sever part of the complaint pursuant to CPLR § 603. Specifically, defendants seek dismissal of all claims against defendants Todd and Quanda Francis, as well as dismissal of the fraud and conversion causes of action and punitive damages as against all defendants. Plaintiff opposes the instant motions. For the reasons set forth below, defendants' motion to dismiss is granted in part and defendants' motion to sever is denied.

Factual Background and Allegations

Plaintiff contracted with Sykes Capital Management (hereinafter "Sykes") to collect 20,000 signatures to support her bid for Governor of New York State. See NYSCEF Doc. 2. Plaintiff and defendant Sykes executed a written agreement stating that Sykes would use its "best

1 The Court would like to thank Bani Bedi for her assistance in this matter.

efforts” to collect the signatures, in return for a payment of \$25,000. *Id.* A month after execution of the contract, plaintiff alleges that defendants delivered to plaintiff petitions containing only 700 signatures.

Plaintiff alleges that defendants used plaintiff’s payment, not to hire staff to gather signatures for her campaign rather it was used to gather signatures for defendant Quanda Francis’ bid for Congress. Additionally, plaintiff alleges Quanda Francis borrowed \$2,500.00 from her as a personal loan and has failed to repay the loan.

Discussion

When considering a motion to dismiss based upon CPLR § 3211(a)(7), the court must accept the alleged facts as true, accord the plaintiff the benefit of every possible favorable inference, and determine whether the facts alleged fit into any cognizable legal theory. See *Leon v Martinez*, 84 NY2d 83 [1994].

Defendants seek dismissal of all claims as against defendants Quanda Francis and Todd Francis contending that those defendants on not personally liable and the complaint fails to sufficiently plead allegations pierce the corporate veil. However, plaintiff complaint alleges that defendants Todd and Quanda Francis together enticed plaintiff to sign the contract with Sykes, misrepresented their intentions to perform the contract, and then used the money plaintiff paid to instead fund Quanda Francis’ Congressional campaign.

"Generally, a plaintiff seeking to pierce the corporate veil must show that (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff’s injury" (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018] quoting *Conason v Megan Holding, LLC*, 25 NY3d 1, 18 [2015]). Further, it has been held by the Court

of Appeals that, at the pleading stage, a plaintiff seeking to pierce the corporate veil must adequately allege the existence of a corporate obligation and that the defendant exercised complete domination and control over the corporation and abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice. *Id.*

The Court finds that plaintiff's complaint contains sufficient factual allegations to pierce the corporate veil. Plaintiff alleges Quanda and Todd Francis exercised complete dominion over Sykes and they abused their business privileges to injure the plaintiff. Consequently, the Court finds that the complaint sufficiently states a cognizable cause of action against defendants Quanda and Todd Francis.

Accordingly, the defendants' motion seeking dismissal of all claims against Todd and Quanda Francis is denied.

Second Cause of Action: Conversion

Plaintiff's complaint alleges that defendants' alleged use of plaintiff's money for Quanda Francis' personal use constitutes conversion. Defendants contend that the conversion claim is duplicative of plaintiff's breach of contract claim thus dismissal is warranted.

A claim for conversion cannot be maintained if it is duplicative of one for breach of contract. See *Peters Griffin Woodward, Inc., v WCSC, Inc and MMT Sales, Inc.*, 88 AD2d 883 [1st Dept 1982]; see also *Retty Financing, Inc. v Morgan Stanley Dean Witter & Co.*, 293 AD2d 341 [1st Dept 2002].

Here, plaintiff paid \$25,000.00 to defendants pursuant to a contractual obligation. The Court finds that plaintiff has not sufficiently alleged any breached duty distinct from the breach of contract, thus making this claim duplicative of the breach of contract claim. Accordingly, the defendants' motion seeking dismissal of the conversion claim is granted.

Third Cause of Action: Fraud

Plaintiff alleges in her third cause of action that defendants engaged in fraud by falsely representing to plaintiff that Sykes had the resources, expertise, and experience to gather 20,000 signatures, and then by accepting payment for the same. Defendants move to dismiss the fraud cause of action alleging that it is duplicative of plaintiff's first cause of action for breach of contract and fails to satisfy the pleading standard pursuant to CPLR § 3016(b). The Court respectfully disagrees.

“To establish fraud, a plaintiff must show ‘a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury.’” *Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 151 AD3d 83 at 85 [1st Dept 2017]. Further, CPLR § 3016(b) provides that when a cause of action is based upon fraud “the circumstances constituting the wrong shall be stated in detail.”

Viewing the complaint in the light most favorable to the plaintiff and giving the plaintiff all possible inferences, the Court feels that the complaint is sufficient to male out this claim. In the complaint, there are many specific allegations of wrongdoing that as alleged that go above a simple breach of contract. There are allegations that the moneys provided by plaintiff were used for a different campaign. Also, there is the specific allegation that the defendants informed plaintiff that they has hired staff to meet their obligations under the contract but refused to provide a list of such individuals. There is also the specificity that only 700 signatures were provided, when the contract discussed 25,000. To this Court, these allegations, at the pleading stage, are sufficient to maintain a fraud cause of action.

Punitive Damages

Defendants seek dismissal of plaintiff's request for punitive damages, arguing that there is no pattern of harm directed at the public that could justify punitive damages. Punitive damages are not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrongs but to vindicate public rights. See *Garrity v Lyle Stuart, Inc.*, 40 NY2d 354, 358 [1976]. However, where the breach of contract also involves a fraud evincing a "high degree of moral turpitude" and demonstrating "such wanton dishonesty as to imply a criminal indifference to civil obligations", punitive damages are recoverable if the conduct was "aimed at the public generally." See *Walker v Sheldon*, 10 NY2d 401, 404-405 [1961].

As the fraud count remains at this stage of the litigation, so does the punitive damages claim.

Severance

Defendants move to sever the portion of the complaint where plaintiff alleges Quanda Francis has failed to repay a \$2,500.00 loan. Defendants argue that this complaint is legally and factually distinct from the other causes of action and thus may cause confusion and prejudice to defendants. In opposition, plaintiff argues that separating the claims does not further convenience but rather burdens the parties and the Court.

CPLR § 603 provides that "in furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue." The factors to be weighed when severing a cause of action are the efficiency of the discovery process, delay of trial, possible jury confusion, and prejudice to one of the parties. See *Reid v Haher*, 88 AD2d 873 [1st Dept 1982].

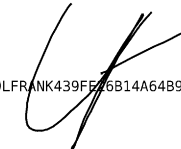
The Court denies the defendants' motion to sever the complaint relating to the loan. The same parties are involved in both claims and the claims seem to be potentially related. The Court

finds that avoiding severance serves judicial economy. Thus, the defendants' motion to sever is denied.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted in part, in that the second cause of action is dismissed; and it is further

ADJUDGED that the motion is denied in all other respects.

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LYLE E. FRANK, J.S.C.

6/23/2023
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE