

Rivas v M3dicine Holdings, Inc.

2023 NY Slip Op 32556(U)

July 21, 2023

Supreme Court, New York County

Docket Number: Index No. 651725/2022

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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PABLO RIVAS,

Plaintiff

Index No. 651725/2022

- against -

DECISION AND ORDER

M3DICINE HOLDINGS, INC.,

Defendant

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LUCY BILLINGS, J.S.C.:

Plaintiff, a former corporate director of defendant and its two subsidiaries, moves for summary judgment in lieu of a complaint based on a promissory note executed by defendant in February 2021, which plaintiff claims imposed an unconditional and unequivocal obligation on defendant to pay plaintiff past due compensation for his services. C.P.L.R. § 3213. Defendant points out that the promissory note is an exhibit to a Master Agreement between plaintiff and defendant, also executed in February 2021, on the date plaintiff separated from defendant's employment. Defendant claims plaintiff fraudulently induced defendant into both agreements by concealing that, before the separation, he was using defendant's proprietary information and other resources to create a competing business, Medaica, LLC.

I. THE PARTIES' INTERACTIONS

The parties do not dispute that plaintiff during his employment with defendant acquired access to defendant's business plan, trade secrets, and other confidential information regarding the design, development, and commercialization of medical devices, diagnostic medical software, and web-based telemedicine platforms. Defendant's witness Nayyar Hussain attests that plaintiff used defendant's business model while still employed with defendant to form Medaica to compete with defendant and develop an electronic stethoscope with defendant's technology. Hussain admits, however, that he possesses no personal knowledge of such actions by plaintiff. Although Hussain attests that during negotiation of the Master Agreement and promissory note plaintiff misrepresented that he did not intend to compete with defendant, neither agreement prohibits plaintiff from competing, and the Master Agreement's release and merger provisions bar defendant's reliance on plaintiff's representations before the agreement's execution.

In the Master Agreement §.8(b), defendant released plaintiff from all "contracts, agreements and obligations and liabilities . . . including without limitation such claims and defenses as fraud, mistake," except obligations under the promissory note, Master Agreement, and any contemporaneous agreement. Aff. of Nayyar Hussain Ex. 3. Section 11 provides that the Master

Agreement "constitutes the entire agreement among the Parties . . . and supersedes all prior agreements and undertakings, both written and oral, among the Parties." Id. Therefore defendant fails to demonstrate justifiable reliance on the alleged misrepresentation to support defendant's fraudulent inducement claim. Centro Empressarial Cempresa S.A. v. America Movil S.A.B. de C.V., 17 N.Y.3d 269, 276-77 (2011); Eurycleia Partners, LP v. Seard & Kissel, LLP, 12 N.Y.3d 553, 559 (2009); Barlow v. Skroupa, ___ A.D.3d ___, 2023 WL 4239667, at *1 (1st Dep't June 29, 2023); Kovkov v. Law Firm of Dayrel Sewell, PLLC, 187 A.D.3d 505, 506 (1st Dep't 2020). If defendant was relying on plaintiff's promise that plaintiff had no competing interest with defendant while it employed him or that he would refrain from competing, as a condition for payment according to the promissory note, it was incumbent on defendant to include such a provision in the note or Master Agreement. Kovkov v. Law Firm of Dayrel Sewell, PLLC, 187 A.D.3d at 506; Leonard v. Gateway II, LLC, 68 A.D.3d 408, 409 (1st Dep't 2009).

II. DEFENDANT'S NEED FOR DISCLOSURE

To defeat summary judgment, defendant must identify testimony exclusively within plaintiff's knowledge or documents in his control that likely will raise a material factual issue. C.P.L.R. § 3212(f); Civic v. City of New York, 215 A.D.3d 445, 446 (1st Dep't 2023); RSR Corp. v. Leg O LLC, 214 A.D.3d 463, 465

(1st Dep't 2023); 800 Third Ave. Assocs., LLC v. Roadrunner Cap. Partners LLC, 214 A.D.3d 429, 430 (1st Dep't 2023). "The mere hope that additional discovery may lead to sufficient evidence to defeat a summary judgment motion is insufficient to deny such a motion." Singh v. New York City Hous. Auth., 177 A.D.3d 475, 476 (1st Dep't 2019). See C.P.L.R. § 3212(f); Board of Managers of Apthorp Condo. v. Apthorp Garage LLC, 187 A.D.3d 632, 633 (1st Dep't 2020). While defendant may need disclosure to support defendant's other tort claims, defendant suggests no potential testimony or documents defendant needs to support its fraudulent inducement claim. C.P.L.R. § 3212(f); Civic v. City of New York, 215 A.D.3d at 446; RSR Corp. v. Leg O LLC, 214 A.D.3d at 465; 800 Third Ave. Assocs., LLC v. Roadrunner Cap. Partners LLC, 214 A.D.3d at 430. Defendant is fully aware of plaintiff's representations to it before the parties entered the promissory note and Master Agreement.

III. DEFENDANT'S COUNTERCLAIMS

Although in the Master Agreement and promissory note plaintiff neither agreed he was not competing nor promised not to compete with defendant, it further claims that, as a corporate director, plaintiff owed a fiduciary duty to disclose any competing interest while he remained employed by defendant. Any such breach of plaintiff's fiduciary duty, however, does not invalidate the Master Agreement, let alone the promissory note.

The note is enforceable independent of plaintiff's breach of other obligations. Neither the note nor the Master Agreement is conditioned on plaintiff performing other duties or refraining from tortious conduct.

Plaintiff's breach of his fiduciary duty and any other torts defendant seeks to interpose as counterclaims, such as misappropriation of intellectual property or tortious interference with defendant's contracts or business relations with nonparties, defendant may claim in a separate action. Defendant does not show any prejudice that pursuit of defendants' counterclaims in a separate action will cause. Robert Stigwood Organisation, Inc. v. Devon Co., 44 N.Y.2d 922, 923-24 (1978); Deka Immobilien Inv. GmbH v. Lexington Ave. Hotel, L.P., 196 A.D.3d 424, 425 (1st Dep't 2021); Veg 83, LLC v. JTED83, Inc., 169 A.D.3d 558, 558 (1st Dep't 2019); Carlyle CIM Agent, L.L.C. v. Trey Resources I, LLC, 148 A.D.3d 562, 564 (1st Dep't 2017).

IV. CONCLUSION

Consequently, the court grants plaintiff's motion for summary judgment in lieu of a complaint for the principal amount of the promissory note, \$287,500.00, with interest at 9% per year from March 7, 2022, seven days after the note became due, as it provides. C.P.L.R. § 3213. It also provides for plaintiff's recovery of his reasonable attorneys' fees and expenses for this action to enforce the note. The court refers the issue of the

amount of attorneys' fees to be awarded to plaintiff to the Special Referee Clerk for placement at the earliest possible date on the calendar of the Special Referees' Part, which at the initial appearance shall assign this issue to an available Judicial Hearing Officer (JHO) or Special Referee to hear and determine. C.P.L.R. § 4317. Within 15 days after entry of this order, plaintiff shall serve it on defendants and shall submit to the Special Referee Clerk the Information Sheet accessible at the "References" link on the court's website, completed with all the information called for. The Special Referee Clerk then shall advise the parties of the date to appear on the Special Referees' Part calendar. The parties shall appear on that date with all witnesses and other evidence the parties seek to introduce and be ready to proceed with the assessment of reasonable attorneys' fees and expenses. Unless the assigned JHO or Special Referee orders otherwise, the assessment shall proceed from day to day.

DATED: July 21, 2023



LUCY BILLINGS, J.S.C.

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