

GT Secs., Inc. v Nurture Life, Inc.

2023 NY Slip Op 33898(U)

October 31, 2023

Supreme Court, New York County

Docket Number: Index No. 652875/2023

Judge: Lisa S. Headley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA S. HEADLEY PART 28M

Justice

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GT SECURITIES, INC., ARGO CAPITAL ADVISORS, LLC

Plaintiff,

- v -

NURTURE LIFE, INC.,

Defendant.

-----X

INDEX NO. 652875/2023
MOTION DATE 08/04/2023
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 45, 46, 48 were read on this motion to/for DISMISS

Defendant Nurture Life, Inc., ("Defendant") filed this instant motion pursuant to CPLR §3211(a)(1) and (a)(7) dismissing the First and Second Causes of Action set forth in the plaintiffs' Complaint. Plaintiffs, GT Securities, Inc. and Argo Capital Advisors, LLC ("Plaintiffs") filed opposition to the motion. Defendant filed a reply.

Background

On May 21, 2021, plaintiffs entered into a Financial Advisory Agreement ("agreement") with the defendant. Pursuant to the agreement, plaintiffs agreed to provide defendant with advisory services in connection with defendant's search for financing its business operations in exchange for a 5% cash fee equivalent to the sum total of all funds the defendant received. Following the execution of the agreement, Plaintiffs introduced defendant to a non-party, Decathlon Specialty Finance, LLC ("Decathlon"), and Decathlon agreed to provide defendant with \$8 million dollars in funding for its business operations.

After Defendant informed plaintiffs that the funding transaction with Decathlon for \$8 million dollars had closed, soon after, plaintiffs submitted an invoice to defendant for \$400,000.00 (the "Invoice"), representing 5% of the \$8 million in funding provided by Decathlon, per the terms of the agreement. After Plaintiff submitted a letter seeking payment of the invoice, defendant's attorney sent a letter to Plaintiffs reiterating Defendants refusal to pay based on an overly restrictive reading of the agreement. Subsequently, on June 14, 2023, Plaintiffs commenced this

action for, *inter alia*, breach of contract, and, in the alternative, for *quantum meruit* for advisory services performed.

I. Defendant's Motion to Dismiss

A. The First Cause of Action for Breach of Contract

In support of the instant motion, defendant submits the affidavit of Jennifer Chow, co-founder and president of Nurture Life, Inc., the attorney affirmation of Michael M. Munoz, the plaintiff's complaint, the agreement between plaintiff and defendant, and the revenue loan agreement between Decathlon and defendant.

In her affidavit, Ms. Chow attests that she has personal knowledge that on July 26, 2022, non-party Decathlon executed a revenue loan financing agreement, wherein Decathlon would lend defendant an amount of \$8 million, and defendant would repay that loan on certain terms, and that Decathlon entered into a subordination agreement with one of defendant's existing creditors to ensure Decathlon's first lien position securing its debt. Ms. Chow claims that defendant never gave a note or any instrument to Decathlon. Then defendant entered into a transaction with an entity called Validus Transaction, wherein defendant issued a convertible into equity to Validus. Ms. Chow further states that the plaintiffs' services were "marked by incompetence," and plaintiffs misrepresented to potential investors and took actions that defendant would never approve. Ms. Chow states that one of plaintiff's advisors were removed from the project.

Defendant asserts that the plaintiffs were inept at targeting appropriate potential investors and assisting in the arrangement of the Financing Transaction. Defendant argues, *inter alia*, the first cause of action for breach of contract must be dismissed because the explicit language of the agreement demonstrates that Defendant had no contractual obligation to pay plaintiffs a fee in connection with the Decathlon Transaction. In addition, defendant argues the agreement's definition of a Financing Transaction, is "unambiguous" since the agreement states that a "Financing Transaction", for which plaintiffs would earn a fee, is limited to "the sale by the [Nurture Life] (or any of its subsidiaries) of any of its (or their) securities." Defendant further declares it is incontrovertible that the Decathlon Transaction did not involve the sale of any securities, therefore defendant has no obligation to pay plaintiffs' a fee in connection with the Decathlon Transaction.

B. The Second Cause of Action for *Quantum Meruit*

As to the second cause of action for *quantum meruit*, defendant claims the complaint should be dismissed because the agreement applies to all the work that the plaintiff allegedly performed on the Decathlon Transaction. Defendant claims Plaintiffs cannot argue that the agreement does not apply to the Decathlon Transaction because based upon the Complaint, wherein plaintiffs state “the parties continued their engagement under the Financing Advisory Agreement with each party performing in accordance with the terms of that agreement, up until Nurture Life breached the agreement by refusing to pay the Invoice.” (See, NYSCEF Doc No. 9, ¶17). Therefore, defendant argues that Plaintiffs’ claim for *quantum meruit* must be dismissed.

II. Plaintiffs’ Memorandum of Law in Opposition for Motion to Dismiss the Complaint

In opposition, plaintiffs submit the affidavit of Mischa Vasilchikov (“Mischa”), the founding partner of Argo Capital Advisors, LLC. In the affidavit, Mischa states that plaintiffs performed advisory services in good faith for defendant for more than a year, and attests that he received an email from Steve Minisimi, co-founder of defendant Nurture Life Inc., who asked him to explore debt options of plaintiffs’ investors that would be willing to invest in defendant. Then on July 14, 2022, defendant informed plaintiffs’ that their meeting with investor and non-party, Decathlon, “went very well.” In an email, the founding partner wrote to Mischa to “send me the executed contract between us for your fee.” (See, NYSCEF Doc No. 25).

Plaintiffs argue, *inter alia*, defendant’s motion to dismiss should be denied because defendant insists that the Decathlon’s investment does not qualify as a “security” under its usage in the agreement, yet Defendant fails to define the terms “security” or “securities” within the agreement; and the language of the Security Agreement itself makes clear that Decathlon’s investment qualifies as a type of “security” under the agreement. Furthermore, Plaintiff asserts defendant’s motion to dismiss should be denied because, under New York State Law, the *quantum meruit* cause of action can be pled in the alternative. Lastly, Plaintiffs declare they have successfully pled the elements of a *quantum meruit* claim while defendant fails to even address the elements of a claim for *quantum meruit* in its memorandum of law. Therefore, Plaintiffs request that this Court deny defendant’s motion to dismiss.

III. Defendant’s Reply Memorandum of Law in Further Support of Motion to Dismiss

In reply, Defendant Nurture Life, Inc., argues, since the instant motion is predicated on documentary evidence, the first cause of action or breach of contract must be dismissed because

Plaintiffs earn a fee only upon Defendant Nurture Life's sale of securities and the Decathlon transaction did not involve the sale of securities. Additionally, Defendant argues the second cause of action for *quantum meruit* must be dismissed because plaintiffs failed to raise the dispute in their opposition to the motion. Therefore, Defendants request this Court grant their motion dismissing the First and Second Causes of Action set forth in the Complaint.

Discussion

On a motion to dismiss pursuant to *CPLR §3211*, the pleading must be afforded a liberal construction. *See, CPLR §3026; Leon v. Martinez*, 84 N.Y. 2d 83, 87-88 (1994). The Court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine whether the facts alleged fit within any cognizable legal theory. *Rovello v. Orofino Realty Co.*, 40 N.Y.2d 633, 634 (1976).

Under *CPLR § 3211(a)(1)*, dismissal is warranted if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law. *Leon v. Martinez*, *supra*, at 88. 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 plaintiff has a cause of action, not whether the plaintiff has stated one. *See, Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1977).

Under *CPLR §3211(a)(7)*, “[i]n considering a motion to dismiss a complaint for failure to state a cause of action ... the pleadings must be liberally construed.” *Dye v. Catholic Med. Ctr. Of Brooklyn & Queens*, 273 A.D.2d 193 (2d Dep’t 2000). Moreover, the Court must accord the “plaintiff the benefit of every possible favorable inference” and “the court must determine only whether the facts alleged fit within any cognizable legal theory.” *Id.* Dismissal is warranted where “the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017).

Here, the Court finds that dismissal is not warranted because Plaintiffs’ complaint states a cognizable cause of action for breach of contract and, in the alternative, *quantum meruit*. Additionally, this Court finds the affidavits submitted by the parties contain conflicting assertions regarding compensation under the Financial Advisory Agreement. Specifically, there are issues of fact raised as to whether compensation was based on a 5% cash fee for the sum total of all funds

the defendant received, or whether compensation was solely limited to the sale of defendant’s securities.

Lastly, Plaintiffs’ and Defendant’s interpretation of the Financial Advisory Agreement is vastly different. This Court finds there is ambiguity regarding the financing transaction fees and the defined terms of the financing transaction. (See, Exhibit B to Defendant’s motion, NYSCEF Doc No. 10) which leaves this Court to conclude that this agreement is ambiguous if “on its face” it is “reasonably susceptible of more than one interpretation”. Schulte Roth & Zabel LLP v. Metro. 919 3rd Ave. LLC, 202 A.D.3d 641(1st Dep’t 2022). Therefore, the defendant’s motion to dismiss must be denied.

Accordingly, it is hereby

ORDERED that Defendant Nurture Life, Inc.’s motion pursuant to CPLR §§3211(a)(1) and (a)(7) dismissing the First and Second Causes of Action set forth in the Complaint in this action is DENIED, and it is further

ORDERED that the parties shall proceed with discovery expeditiously and in good faith; and it is further

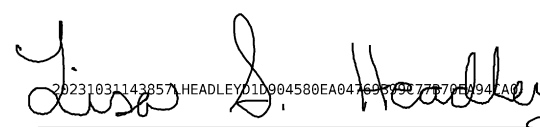
ORDERED that the parties are to complete the preliminary conference order by **December 22, 2023**, which will be sent by the Part 28 clerk; and it is further

ORDERED that within 30 days of entry, movant-defendant shall serve a copy of this Decision/Order upon the plaintiffs with notice of entry; and it is further

ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered.

This constitutes the Decision and Order of the Court.

10/31/2023
DATE


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 LISA S. HEADLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE