

Peraza v Revere Capital Advisors, LLC
2023 NY Slip Op 33914(U)
November 2, 2023
Supreme Court, New York County
Docket Number: Index No. 152017/2023
Judge: Barry R. Ostrager
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**SUPREME COURT OF THE STATE OF NEW
YORK NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

OMAR PERAZA and MICHAEL SMITH,

Plaintiffs,

- against -

REVERE CAPITAL ADVISORS, LLC, PAUL
WOLTER, DAN BARNETT, JEROME CROWN,
HARVEY MCGRATH and JOHN KINDER,

Defendants.

INDEX NO.	152017/2023
MOTION DATE	
MOTION SEQ. NOS.	004, 005 & 006

DECISION + ORDER ON MOTIONS

HON. BARRY R. OSTRAGER

The Court heard oral argument via Microsoft Teams on November 2, 2023, on three motions: the motion by defendants Revere Capital Advisors LLC (“Revere”), Paul Wolter, Daniel Barnett, and Jerome Crown to dismiss this action pursuant to CPLR §3211(a)(1) and (7) based on documentary evidence and failure to state a cause of action (seq. 004); the motion by defendant Harvey McGrath to dismiss this action pursuant to CPLR § 3211(a)(1) and (7) and also pursuant to CPLR §3211(a)(8) based on lack of jurisdiction over McGrath (seq. 005); and the motion by plaintiffs Omar Peraza and Michael Smith for a stay of this action pending the determination of the arbitration plaintiffs commenced against their former employer, non-party HAI Technologies, Inc. (“HAI Technologies”) (seq. 006).

Defendant Revere owns a majority of the stock in HAI Technologies. Messrs. Kinder and McGrath are principals of Revere. The other individual defendants allegedly are the majority members of the Board of Directors of HAI Technologies. The action was discontinued against defendant Kinder by Stipulation (NYSCEF Doc. No. 42), mooted his original participation in

any of the motions. In accordance with the November 2, 2023 transcript of proceedings, the motions are determined as follows.

Plaintiffs commenced this action to recover money damages for alleged wrongdoing by defendants Revere Capital Advisors, LLC (“Revere”) and Paul Wolter, Dan Barnett, Jerome Crown, and Harvey McGrath (the “Individual Defendants”, together with Revere, “Defendants”) arising out of Defendants’ purported control of HAI Technologies, the former employer of the Plaintiffs. Defendants allegedly caused Plaintiffs injury through acts of fraud in the inducement of Plaintiffs’ employment contracts, breach of the employment contracts, breach of the covenant of good faith and fair dealing in connection with their obligations under the employment contracts, and, in the alternative, for *quantum meruit* and unjust enrichment. Plaintiff Peraza, as a unit holder of HAI Holdings, LLC (“Holdings”), the holding company of HAI Technologies, also asserts a claim individually against Defendants for breaches of their fiduciary duties to Peraza.

The focus of the dispute is Plaintiffs’ work on the development and commercialization of the company’s Oil Recovery Tool (“ORT”), technology that purportedly allows for additional oil to be recovered from wells. On March 2, 2023, the same day Plaintiffs commenced this action, Plaintiffs commenced an arbitration against their former employer HAI Technologies which asserted many claims similar to those asserted in this action. That arbitration is still pending.

The Court grants the motion by defendant Harvey McGrath to dismiss the claims against him for lack of personal jurisdiction (seq. 005). The Court lacks general jurisdiction over McGrath pursuant to CPLR §301 as McGrath is domiciled in the United Kingdom. Similarly, Plaintiffs have failed to meet their burden to establish long-arm jurisdiction pursuant to any of the subdivisions in CPLR §302(a). McGrath was merely an investor and minority shareholder in

defendant Revere, which was a majority shareholder of Plaintiffs' employer HAI Technologies with offices in New York. Plaintiffs' allegations regarding McGrath's purported transaction of business in New York are not only ever-changing, but they are belied by the documentary evidence produced by McGrath. Further, Plaintiffs have failed to establish the required substantial relationship between McGrath's alleged transaction of business in New York and Plaintiffs' causes of action in order to satisfy the nexus requirement of CPLR § 302(a)(1).

Nor have Plaintiffs established long-arm jurisdiction pursuant to CPLR § 302(a)(2), as McGrath's alleged "acquiescence" in decisions by the other Defendants, even if true, does not rise to the level of a "tortious act within the state." Similarly, Plaintiffs cannot establish jurisdiction pursuant to CPLR § 302(a)(3) founded on "a tortious act without the state causing injury to [plaintiffs] within the state", as neither Plaintiff is a New York resident. And Plaintiffs concede that there is no basis for long-arm jurisdiction under CPLR 302(a)(4). Therefore, motion sequence 005 is granted, and all claims against defendant Harvey McGrath are dismissed for lack of jurisdiction. Should depositions reveal a jurisdictional basis, Plaintiffs may seek to reinstate the claims against Mr. McGrath.

The Court grants in part and denies in part the motion to dismiss by defendant Revere Capital and the remaining Individual Defendants (mot. seq. 004). Plaintiffs' primary complaint is with their former employer, HAI Technologies, and Plaintiffs have a pending arbitration against HAI. The claims against the Defendants here appear to be primarily based on a theory of alter ego liability.

Plaintiffs have failed to plead fraud in the inducement with the required specificity needed to support the Second and Third Causes of Action which alleged that Plaintiffs were fraudulently induced to enter into the 2017 Employment Agreements and the 2019 Amendments

with their employer HAI Technologies. No misrepresentations have been alleged that rise to the level of fraudulent misrepresentations. Therefore, the Second and Third Causes of Action are dismissed.

Similarly, the Court dismisses the Fifth Cause of Action which alleges a breach of fiduciary duty to Plaintiff Peraza as a unit holder. The allegations fail to sufficiently plead a breach of duty by any of the Defendants, even if the pleadings are liberally construed.

The Court reluctantly declines to dismiss the First Cause of Action alleging a breach of the Peraza and Smith Employment Agreements. Although Defendants are not signatories nor parties to the Agreements, Plaintiffs have pled – albeit barely ---alter ego liability.

The Court dismisses the Fourth Cause of Action for breach of the covenant of good faith and fair dealing. No non-duplicative basis for such a claim has been stated. The Court dismisses the Sixth through Tenth Causes of Action based in quasi-contract. It is undisputed that the Plaintiffs have written employment agreements governing their rights and obligations, and the existence of those written agreements bars the quasi-contract claims against these parties. The Court dismisses the request for punitive damages. The evidence does not rise to the level of misconduct, even if the pleadings are liberally construed.

The Court grants Plaintiffs' motion (seq. 006) to stay the remaining claim in this action pending a determination of Plaintiffs' AAA arbitration against their former employer HAI Technologies. The contractual liability alleged here is based on an alter ego theory. If the AAA finds no contractual liability by the employer, there can be no alter ego liability here. Therefore, the claims in this action are sufficiently intertwined with the claims in the arbitration to merit a stay, notwithstanding the prejudice claimed by the defendants.

A Status Conference is scheduled for June 25, 2024 at 10:00 a.m., subject to adjustment by the Commercial Division Justice to be assigned to this action in 2024 after this Court retires as a Commercial Division Justice. Any further applications shall be made to the Commercial Division Justice assigned in 2024 after the arbitration has been determined.

Dated: November 2, 2023



BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE