SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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RYAN URBAN, GIGI GROUP, LLC

Plaintiff,

- v -

HUDSON CAPITAL GROUP VENTURES, LLC,

Defendant.

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INDEX NO. 651660/2023

MOTION DATE 11/08/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for DISMISSAL.

For the foregoing reasons, the defendant's motion to dismiss is denied.[1]

Facts

Plaintiffs Ryan Urban and Gigi Group, LLC, bring this action for breach of contract against defendant Hudson Capital Group Ventures, LLC. In July 2021, Urban and the defendant entered into a contract requiring the defendant to provide "advisory and capital raising services" for the development and construction of a restaurant and nightclub located at 138 Bowery, New York, NY. In return, Urban was to make periodic payments to the defendant. *See* NYSCEF Doc. No. 10.

Pursuant to the contract, plaintiffs claim to have fully performed by making payments to the defendant totaling $125,000. Plaintiffs allege that despite promising to raise between $1,500,000 to $2,000,000, the defendant has failed to raise any capital for the plaintiffs' project.

[1] The Court would like to thank Eric Chubinsky for his assistance in this matter.

Plaintiffs now bring this action for breach of contract, or in the alternative that the contract is unenforceable, unjust enrichment.

The defendant now moves this Court to dismiss the plaintiff's amended complaint. Among other arguments, the defendant claims that the contract's indemnification clause bars the plaintiffs from recovery. This clause states, in relevant part: "Under no circumstances shall HGCV, in the performance of this Agreement, be liable to Ryan or any other person for any act or omission of HCGV, unless such liability is due to (a) HCGV's gross negligence, bad faith, or willful misconduct …" NYSCEF Doc. No. 10. For the foregoing reasons, the defendant's motion to dismiss is denied.

Discussion

"On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction (*see* CPLR 3026). The facts are to be accepted as alleged in the complaint as true, accord plaintiffs the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83, 87–88 [1994].

According the plaintiffs the benefit of every possible inference, this Court finds that the documentary evidence is not sufficient to support the defendant's pre-answer motion to dismiss.

The defendant first argues that the contract's indemnification clause bars the plaintiff from recovery absent any gross negligence, bad faith, or willful misconduct on the behalf of the defendant. However, as the Court of Appeals has stated: "an exculpatory clause is unenforceable when, in contravention of acceptable notions of morality, the misconduct for which it would grant immunity smacks of intentional wrongdoing. This can be explicitly, as when it is fraudulent, malicious or prompted by the sinister intention of one acting in bad faith. Or, when, as in gross negligence, it betokens a reckless indifference to the rights of others, it may be

implicit. *Kalisch-Jarcho v. New York*, 58 N.Y.2d 377, 385 [1983] (citing *Matter of Karp v. Hults*, 12 A.D.2d, affd 9 N.Y.2d 857).

Here, the defendant has allegedly failed to raise any capital for the plaintiffs, despite contracting to raise between $1,500,000 to $2,000,000. According plaintiffs the benefit of every possible inference, the plaintiffs' allegations may raise to the level of willful misconduct. But also, preventing the plaintiff from recovery when the defendant has raised no capital would likely at least represent a reckless indifference to the rights of plaintiffs under the contract. Thus, in the light most favorable to the plaintiffs, the indemnification clause will not bar recovery at this stage.

Next, the defendant argues that the voluntary payment doctrine bars plaintiff from recovery. The defendant cites a Court of Appeals case specifying that the voluntary payment doctrine "bars recovery of payments voluntarily made with full knowledge of the facts, and in the absence of fraud or mistake of material fact or law." *Dillon v. U-A Columbia Cablevision of Westchester, Inc.*, 100 N.Y.2d 525, 526 [2003]. However, in *Dillon*, the plaintiff sought to recover late fees that she had paid to the defendant cable television company. Plaintiff argued that the costs had "no relation to the defendant's actual costs incurred in servicing such payments" and were therefore mischaracterized as late fees. *Id.* The Court held that the plaintiff knew that she would be charged for late payments, and her payment was in fact late. Therefore, given that the plaintiff's payment was fully voluntary, there was no "fraud or mistake" alleged. *Id.* Thus, mere "mischaracterization" of the late fee did not entitle the plaintiff to recover. *Id.*

This case is distinguishable from *Dillon*. Here, the plaintiffs allegedly made continuous payments because the defendant "kept billing us and promising results." NYSCEF Doc. No. 29. Presumably, if the plaintiffs had known that the defendant would not fully perform their end of

the contract, then the plaintiffs would not have made continuous payments to the defendants. Thus, in the light most favorable to the plaintiffs, it cannot be said that these continuous payments were "voluntary" and "made with full knowledge of the facts." *Id.*

Regarding the defendant's argument that plaintiffs' claim for unjust enrichment is duplicative, this Court finds that this claim is merely made in the alternative, pursuant to CPLR 3014. As such, it is premature to assess whether this cause of action is viable.

Lastly, the defendant argues that because the contract does not specifically include Gigi Group, LLC, that the complaint must be dismissed as to that plaintiff. However, the contract does specify that it is between "Ryan Urban and any affiliated entities." (NYSCEF Doc. No. 10). Given that Ryan Urban is the "sole member" of Gigi Group, LLC, the complaint is not dismissed as to that plaintiff on the record before this Court.. Accordingly, it is hereby

ADJUDGED that the defendant's motion to dismiss is denied.

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11/9/2023
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE