

**Whitfield v Law Enforcement Empls.
Benevolent Assn. (LEEBA)**

2023 NY Slip Op 34877(U)

May 23, 2023

Supreme Court, Kings County

Docket Number: Index No. 523750/2021

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 23rd day of MAY, 2023

P R E S E N T:
HON. RICHARD VELASQUEZ

Justice.

-----X
JOHN "DIVINE G" WHITFIELD, d/b/a
DIVINE G ENTERTAINMENT,

Plaintiff,

-against-

Index No.:523750/2021
Decision and Order
Mot. Seq. No. 2

LAW ENFORCEMENT EMPLOYEES BENEVOLENT
ASSOCIATION (LEEBA), JAKWAN RIVERS,
KENNETH WYNDER, Jr., STEVEN WHITTICK,
LAQUAN WORD, and YOLANDA MOORE,,

Defendants,
-----X

The following papers NYSCEF Doc #'s 15 to 26 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	15-18
Opposing Affidavits (Affirmations) _____	20-25
Reply Affidavits _____	26

After having come before the Court on February 1, 2023 and the Court having heard Oral Argument the court finds as follows:

Defendants move this court for an order pursuant to CPLR 3211 to dismiss plaintiffs complaint in its entirety. Plaintiff opposes the same.

FACTS

It is alleged the Plaintiff created a website for defendant and provided some other

video or website services for defendant through his business Divine G Entertainment. Any agreement between the parties was an oral agreement. There is no writing evidencing said agreement in this action. Plaintiff admits in his Complaint (fn. 25), he was paid on multiple occasions for his services. However, plaintiff contends he should be paid more than the amount he has already accepted.

It is undisputed the plaintiff, shut down the website and email services he had set up for the defendants. Defendant then paid a different vendor to create a new website and email service. Thereafter, plaintiff put the website partially back up, and commenced this action alleging that by not paying him more money, defendant and its board members committed torts against him causing him emotional distress and other tort claims in quantum meruit, unjust enrichment, as well as labor law claims. Plaintiff alleges that he should be paid more.

As to intentional infliction of emotional distress. Failure to pay a disputed invoice does not rise to the level of extreme and outrageous conduct. A claim can only meet the extreme and outrageous standard "where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Howell v. N.Y. Post Co.*, 81 NY2d 115, 121 (1993). Plaintiff fails to allege any actual threats, harassment, intimidation, violence, or physical aggression.

Plaintiff fails to allege fraud-related causes of action in accordance with CPLR 3016(b). Plaintiff fails to allege anything, but conclusory facts based on his own belief. Plaintiff has failed to plead specific facts that indicate a fraud from the outset i.e. that Defendants never intended to pay the plaintiff. *See Cronos Group Ltd. v XComIP, LLC*,

156 AD3d 54, 72 (1st Dept 2017). Most notably, plaintiff was paid by the defendants, and it is therefore impossible for plaintiff to allege sufficient facts for this cause of action.

With regard to civil conspiracy, Plaintiff must demonstrate the underlying tort first, in addition to the following four elements: (1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and, (4) resulting damage or injury.." *World Wrestling Fed'n Entm't, Inc. v. Bozell*, 142 F Supp. 2d 514, 532-33 (S.D.N.Y. 2001). Plaintiff fails to plead these additional elements including only conclusory speculation and does not place Defendants on notice of exactly when they would have conspired not to pay Plaintiff.

As to plaintiff's labor law causes of action. Plaintiff alleges six causes of action all based upon Plaintiff being an employee of LEEBA. The causes of action are: Minimum Wage Violations (Fifth), Unpaid Overtime Wages (Sixth), Spread of Hours (Seventh), Failure to Provide Notice at Time of Hiring (Eighth), Failure to Provide Wage Statements (Ninth), and Retaliation (Tenth). Relief cannot be granted for each of these claims because it is undisputed that plaintiff is not an employee of LEEBA. Specifically, according to plaintiff's Verified Complaint, he admits he was not an employee of Defendants. See *Deboissiere v. Am. Mod. Agency*, 2010 U.S. Dist. EDNY Oct. 22, 2010 ("New York's labor laws apply only to employees, not independent contractors.) As such, all the labor law claims must be dismissed because plaintiff's own admissions demonstrate he was not an employee of LEEBA.

As to plaintiff's claim against the individual board members; Under New York law, one must pierce the corporate veil in order to hold individuals liable in their personal

capacity. Under New York Law, to pierce the corporate veil and sue the individual board members in their personal capacity the plaintiff must demonstrate two elements: (1) the owner "exercised complete domination over the corporation with respect to the transaction at issue," and (2) "such domination was used to commit a fraud or wrong that injured the party seeking to pierce the veil." *Am. Fuel Corp. v. Utah Energy Dev. Co., Inc.*, 122 F3d 130, 134 (2d Cir. 1997) (citing *Morris v. N.Y. State Dep't of Taxation and Fin.*, 82 NY2d 135, 140 (1993)). At the pleading stage, a plaintiff must do more than merely allege that the defendant engaged in improper acts or acted in bad faith while representing the corporation. The plaintiff 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. *Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 33 (2018). Plaintiff failed to allege any of the requirements to pierce the corporate veil to recover against the individual Defendants in their personal capacity. As such these causes of action must be dismissed.

As to plaintiff's unjust enrichment claim, the elements of a cause of action to recover damages for unjust enrichment requires a plaintiff to demonstrate that "(1) the other party was enriched, (2) at that party's expense, and (3) that 'it is against equity and good conscience to permit [the other party to retain what is sought to be recovered.'" *AHA Sales, Inc. v. Creative Bath Prods., Inc.*, 58 AD3d 6, 19 (2nd Dep't 2007), quoting *Clark Fitzpatrick, Inc., v. Long Is. R.R. Co.*, 70 NY2d 382, 388-389 (1987). Plaintiff fails to allege any of the elements of unjust enrichment and quantum meruit. Specifically, plaintiff cannot allege he was not compensated for the

services/work he provided to the defendants. Plaintiff was paid for the work he did. Moreover, plaintiff admits accepting payment. However, plaintiff is unsatisfied with the amount he was paid even though he accepted the payment. As such, these causes of action must be dismissed.

Accordingly, defendant motion to dismiss all causes of action is hereby granted in its entirety for the reasons stated above. Any causes of action not specifically addressed are hereby dismissed.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
May 23, 2023

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ

Hon. Richard Velasquez, JSC

MAY 23 2023

KINGS COUNTY CLERK
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