

Moses v Casement Capital Mgt., LP

2024 NY Slip Op 30047(U)

January 2, 2024

Supreme Court, New York County

Docket Number: Index No. 651044/2021

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

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LAWRENCE MOSES,

Plaintiff,

- v -

CASEMENT CAPITAL MANAGEMENT, LP, CASEMENT
CAPITAL GP, LLC, LIGHTHOUSE
INVESTMENT PARTNERS, LLC, THOMAS K. PURDY,
DAVID MOONEY

Defendant.

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INDEX NO. 651044/2021

MOTION DATE 12/22/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion to/for SUMMARY JUDGMENT.

Plaintiff's motion for summary judgment against defendant Mooney is denied and the cross-motion for partial summary judgment by defendant Mooney is granted.

Background

Plaintiff used to work for defendant Casement Capital Management LP ("CCM") as the head of marketing and investor relations. He began working for CCM in October 2017. Plaintiff points out that as part of his employment, he signed an employment agreement in which he was to receive an annual salary of \$200,000. The agreement also required CCM to give him 30 days advance written notice of termination, 8 weeks of salary if he was fired without cause as well as a payout for any unused days of paid vacation, sick and personal days.

Plaintiff claims that at CCM, he reported to defendant Purdy and that defendant Mooney was in charge of CCM. He observes that he received a notice dated May 24, 2018 stating that his employment was terminated as of May 15, 2018. Plaintiff contends that in violation of his employment agreement, he did not receive any further payments from CCM. He argues that he should be compensated for working until May 29, 2018 (when he received the termination notice), for the 30 days salary based upon CCM's failure to provide written termination notice, for 8 weeks of salary continuation as well as for his 19 unused vacation/sick/personal days.

Plaintiff seeks summary judgment as against defendant Mooney and observes that CCM (as well as Casement Capital GP, LLC) are no longer in business. He observes that he seeks damages against defendant Mooney under Labor Law § 190(3) as Mooney is an employer under that statutory scheme.

Defendant Mooney cross-moves for summary judgment on plaintiff's first cause of action for breach of contract on the ground that he is not personally liable under a contract plaintiff signed with CCM. Mooney argues that because he was not a party to the agreement, he cannot be held liable under it. He emphasizes that he did not sign this agreement on behalf of CCM.

With respect to the Labor Law claim, Mooney argues that there are issues of fact as to whether he constitutes the employer. He observes that mere ownership in the company is not sufficient and that other factors must be assessed. Mooney insists that he did not hire or fire plaintiff and that all hiring decisions were performed by co-defendants Purdy and Lighthouse. Mooney adds that plaintiff was fired because the company was running out of money.

In reply, plaintiff argues that Mooney founded, operated, and managed CCM until it went under. He emphasizes that Mooney was the CIO and the *de facto* CEO of CCM. Plaintiff claims

that the Court should disregard the fact that defendant Purdy signed the employment agreement on behalf of CCM.

In reply to the cross-motion, Mooney insists that plaintiff did not dispute that Mooney was not a party to the employment agreement.

Breach of Contract

As an initial matter, the Court grants defendant Mooney's cross-motion to the extent he seeks to dismiss the first cause of action for breach of contract against him. There is no basis to find that Mooney, an individual, is liable for a contract between plaintiff and CCM. In fact, this agreement (really, a letter agreement) is from defendant Purdy who is identified as managing member (NYSCEF Doc. No. 70). Simply because Mooney had a significant role in the company (Mooney was Chief Investment Officer) is not a basis to make him individually liable pursuant to a contract between CCM and plaintiff.

Labor Law

The central question in this motion is whether Mooney constitutes an "employer" under Labor Law § 190(3) such that he may be personally liable. "The definitions of the term 'employer' under the FLSA and NYLL are coextensive. Thus, under either of the statutes, when a court is asked to determine whether an individual is an employer, the overarching concern is whether the alleged employer possessed the power to control the workers in question, with an eye to the 'economic reality' presented by the facts of each case."

"Among the factors to be considered in determining whether an individual is an employer are whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records. In general,

under these factors, a corporate officer with operational control of a corporation's covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages” (*Jeong Woo Kim v 511 E. 5TH St., LLC*, 133 F Supp 3d 654, 665-66 [SD NY 2015] [internal quotations and citations omitted]).

At his deposition, Mooney claimed that he started the company with defendant Purdy and that they “divided up what each of us would do. Tom [Purdy] took over more of the marketing and day-to-day running the company. And I was in charge of selecting and then monitoring the performance of the traders. So I would say from early on my role was investments. His role, among four people, he could be the CEO, I would be the CIO, but that [was] a little bit random with four people” (NYSCEF Doc. No. 66 at 21).

He added that the decision to hire plaintiff was made by Tom Purdy (*id.* at 33). Mooney asserted that “the key people in that decision were Tom Purdy and Trevor Woods” and that people from Lighthouse (an entity that was providing some initial funding to CCM) may also have been involved (*id.* at 40-41). He testified that he did not recall who fired plaintiff but that he would not have done so without Tom Purdy (*id.* at 86-87). Mooney explained that at the time his discussions with Mr. Purdy were “not specifically about terminating employees. Our conversation was about the fact that we are now completely out of money” (*id.* at 87).


At his deposition, plaintiff admitted that the person that contacted him about working for CCM was Mr. Purdy and that he didn't think he spoke with defendant Mooney about it (NYSCEF Doc. No. 68 at 17-18). He added that he engaged in salary negotiations with Mr. Purdy (*id.* at 20-21) and that he was to report directly to Mr. Purdy while working for CCM (*id.* at 22).

The Court finds that there are issues of fact with respect to whether or not Mooney was plaintiff’s employer under the Labor Law. The record shows that Mooney claims that his role was to oversee the investors as the Chief Investment Officer and there is no dispute that plaintiff was not an investor (he was head of marketing). And plaintiff admits he reported to Mr. Purdy. Moreover, plaintiff acknowledged that he had no conversations with Mooney about a separation agreement and he thought that issues about the termination would be handled by Mr. Purdy (*id.* at 36). Simply put, the Court cannot find as a matter of law that defendant Mooney constitutes plaintiff’s employer under the multi-factor test under the Labor Law described above.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment as against defendant Mooney is denied; and it is further

ORDERED that the cross-motion by defendant Mooney for partial summary judgment dismissing plaintiff’s breach of contract claim against him is granted.

<u>1/2/2024</u> DATE			 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> DENIED		