SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02M

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JAMES CONNELLY

Plaintiff,

- v -

NELSON CHRISTOPHER ALA,

Defendant.

INDEX NO. 657237/2017

MOTION DATE 12/23/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55
were read on this motion to/for JUDGMENT - SUMMARY.

Defendant Nelson Christopher Ala ("Defendant") moves for summary judgment pursuant to CPLR 3212 dismissing plaintiff James Connelly's ("Plaintiff") sole cause of action for breach of contract and for summary judgment on his counterclaim for unjust enrichment. Plaintiff opposes the motion.

This action centers around a purported oral contract between the parties, who were roommates in a Hell's Kitchen apartment from 2012 through 2016 (NYSCEF Doc. No. 35, Statement of Material Facts; NYSCEF Doc. No. 53, Response to Statement of Material Facts). In March 2013, Defendant's foot was run over by a New York City Sanitation Department truck, and he subsequently sued for damages. Plaintiff contends that he and Defendant agreed that Defendant would give him ten percent of any award he received from that lawsuit in exchange for Plaintiff helping him while he recovered from his injuries.

Following the accident, Defendant spent three months in the hospital and thereafter required the use of a wheelchair (*id.*). In 2015, his lower right leg was amputated (*id.*). It is

undisputed that during this period Plaintiff assisted Defendant by, *inter alia*, helping him navigate their building's stairs with his wheelchair, buying food, and paying Defendant's portion of the rent when Defendant did not have funds available (*id.*). Plaintiff further testified that, while Defendant's at-home medical care mostly came from nurses, he would occasionally provide medical services, including changing bandages when a nurse was late or absent (Response to Statement of Material Facts at 4; NYSCEF Doc. No. 33, Plaintiff EBT at 29).

Defendant's lawsuit settled for approximately $4,000,000 in August 2016 (Statement of Material Facts; Response to Statement of Material Facts). On September 13, 2016, Defendant wrote Plaintiff a check for $150,000 (NYSCEF Doc. No. 37). Plaintiff wrote "Gift" on the Memo line (*id.*; Plaintiff EBT at 69). Plaintiff then wrote a letter to Defendant that read, in relevant part: "Thank you for your generous gift. My accountant tells me such a large gift may draw the attention of the IRS to both of us. In order to avoid any misunderstanding, could you please sign the enclosed letter and return it to me?" (NYSCEF Doc. No. 38). The enclosed letter, which the parties agree Defendant neither signed nor returned, stated: "I, Nelson C. Ala, have given James J. Connelly a gift of _____ Mr. Connelly has offered me moral, physical, and on occasion financial support during a time of great need. This gift is a token of my gratitude" (NYSCEF Doc. No. 39).

Defendant moved out of the apartment around October 2016 (Statement of Material Facts; Response to Statement of Material Facts). At around that time, Plaintiff underwent heart surgery and was hospitalized for two months (*id.*). Defendant paid Plaintiff's rent for November and December in two checks for $2,300 each made out to Plaintiff's landlord (*id.*; NYSCEF Doc. Nos. 40-41).

Plaintiff commenced this action on December 6, 2017, by filing a Verified Complaint asserting one cause of action for breach of contract. He alleges that he and Defendant entered a verbal contract in the late summer or early fall of 2013, although he was unable to recall the precise date at his deposition (NYSCEF Doc. No. 1, Complaint ¶¶ 5-6; Plaintiff EBT at 54-56). According to Plaintiff, Defendant promised to pay him ten percent of the gross settlement amount in exchange for Plaintiff's providing for Defendant's needs (Complaint ¶ 5). Plaintiff claims he then rendered those services, including allowing Defendant to stay rent-free at the apartment, buying and preparing food, and helping Defendant with his wheelchair when he left the apartment (*id*. ¶ 7). Plaintiff claims he also allowed Defendant to use his credit card and that Defendant incurred over $60,000 in expenses from 2013 to 2016 (*id*.).

Plaintiff points to the $150,000 check as evidence of Defendant's performance under the contract and testified that Defendant told him at the time the check was given that he would "settle up" with him for the remaining balance (*id*. ¶ 9; Plaintiff EBT at 91). Plaintiff testified that he wrote "Gift" on the Memo line for tax purposes: "our understanding was that it could be . . . written off as a gift" (Plaintiff EBT at 74-75). Plaintiff further claims that the $4,600 that Defendant paid to his landlord was to make up for a "couple of months [of] back rent" (Plaintiff EBT at 84). Plaintiff seeks damages of $250,000, the amount he claims Defendant owes under the purported agreement.

Defendant filed an Answer in which he asserts one counterclaim for unjust enrichment stemming from his payment of Plaintiff's rent for November and December 2016. Defendant concedes that Plaintiff helped him during his recovery in the ways Plaintiff alleges, except that he denies Plaintiff ever assisted in his medical care. However, he disputes Plaintiff's characterization of their relationship during this time and denies having ever agreed to pay

Plaintiff ten percent of the gross proceeds from his settlement. He maintains that he had income from 2013 to 2016 in the form of unemployment benefits, disability payments, and pre-settlement loans and that he either paid for his own living expenses directly or reimbursed Plaintiff as he was able to do so. Defendant claims that the $150,000 check was merely a gift as evidenced by the check's memo line and the written correspondence from Plaintiff (NYSCEF Doc. Nos. 37-39). Defendant further denies that he paid Plaintiff's rent for November and December 2016 in order to resolve back rent and claims he is entitled to reimbursement. Aside from copies of the checks for $150,000 and the two months of rent, neither party submits any documentation regarding rent or other expenses they incurred while sharing the apartment after Defendant's accident.

The parties engaged in discovery, and thereafter Defendant moved for summary judgment dismissing Plaintiff's breach of contract claim and granting his unjust enrichment counterclaim. The action was assigned to this Court on October 3, 2023 and thereafter motion was submitted.

On a motion for summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

A breach of contract claim requires the plaintiff to show that a contract exists, that the plaintiff performed in accordance with the contract, that the defendant breached its contractual obligations, and that the breach resulted in damages (*34-06, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]). A claim for breach of an oral contract must be supported by evidence demonstrating that there was a meeting of the minds between the parties as to essential contract terms (*see Silber v New York Life Ins. Co.*, 92 AD3d 436 439 [1st Dept 2012]). "In determining whether the parties intended to enter a contract, and the nature of the contract's material terms," the Court must "look to the 'objective manifestations of the intent of the parties as gathered by their expressed words and deeds'" (*Stonehill Capital Mgt. LLC v Bank of the W.*, 28 NY3d 439, 448-449 [2016], quoting *Brown Bros. Elec. Contractors v Beam Constr. Corp.*, 41 NY2d 397, 399 [1977]). However, "where questions of fact and credibility exist with respect to the existence of a binding oral agreement, and the terms thereof, summary judgment in favor of either side is inappropriate" (*Kramer v Greene*, 142 AD3d 438, 440 [1st Dept 2016]).

In support of his motion, Defendant argues he has made a prima facie case that no oral agreement existed, and argues that even it did, it would be unenforceable. He contends that Plaintiff's actions after he contends the agreement was reached demonstrate a lack of objective intent to enter a contract, namely his treatment of the $150,000 check as a gift and his lack of records delineating specific services rendered to Defendant. Defendant further contends that even if they had entered into an agreement, it is unenforceable because the nature and scope of Plaintiff's obligations are indeterminable. Finally, he maintains that, even if there were an oral contract, it would be void under the Statute of Frauds as it was impossible for him to perform under the contract in less than one year.

The Court finds that Plaintiff and Defendant offer conflicting testimony as to whether they intended to enter a contract. Plaintiff testified:

> [Defendant] told me that he was going to – you know, that he . . . was looking at a multimillion dollar settlement . . . and that if I continued to help him out and take care of him, and that this was gonna take longer than a few weeks or a few months but within two years, he would have a settlement . . . and that if I would continue to do what I was doing basically, that he would give me 10 percent of – of the gross and – and that I wouldn't have to worry about taxes or anything like that.

(Plaintiff EBT at 59-60). Defendant, on the other hand, testified that he gave the $150,000 check as a gift to Plaintiff because he "was feeling generous . . . feeling grateful at the time" (Defendant EBT at 31). Defendant denies ever having promised Plaintiff ten percent of the gross proceeds of his settlement in exchange for any services from Plaintiff. As there is an issue of fact as to whether the parties intended to enter an oral contract, Defendant's motion for summary judgment on Plaintiff's claim must be denied.

The Court also finds unavailing Defendant's argument that, even if there had been an oral agreement in principle, its terms were so indefinite as to render it unenforceable. To establish the existence of an oral contract, the terms must be "clear and definite, and the conduct of the parties [must evince] 'mutual assent sufficiently definite to assure that the parties [were] truly in agreement with respect to all material terms'" (*Carlsen v Rockefeller Ctr. N., Inc.*, 74 AD3d 608, 609 [1st Dept 2010], quoting *Express Indus. & Terminal Corp. v New York State DOT*, 93 NY2d 584, 589 [1999]). However, "[b]efore rejecting an agreement as indefinite, [the Court] must be satisfied that the agreement cannot be rendered reasonably certain by reference to an extrinsic standard that makes its meaning clear" (*Cobble Hill Nursing Home, Inc. v Henry and Warren Corp.*, 74 NY2d 475, 483 [1989]). Here, the Court finds that Plaintiff's testimony sets forth sufficiently definite material terms of the purported agreement: Plaintiff would pay for

Defendant's rent in their shared apartment, provide Defendant with food, and assist Defendant with daily tasks during the pendency of Defendant's recovery in exchange for ten percent of Defendant's gross recovery in his personal injury case (Plaintiff EBT at 51-52).

Defendant's argument that the purported agreement is void under the Statute of Frauds must also fail. General Obligations Law § 5-701(a)(1) provides that an agreement is void if "[b]y its terms is not to be performed within one year from the making thereof." The Court has "long interpreted this provision . . . to encompass only those contracts which, by their terms, 'have absolutely no possibility in fact and law of full performance within one year'" (*Cron v Hargro Fabrics*, 91 NY2d 362, 366 [1998], quoting *D & N Boening v Kirsch Beverages*, 63 NY2d 449, 454 [1984]). Here, the terms of the alleged agreement do not indicate whether performance would be impossible within one year as it provided that Defendant would pay Plaintiff whenever the case settled. Thus, the agreement as alleged by Plaintiff could have been performed within a year had Defendant's lawsuit settled earlier (*see, e.g., Cron*, 91 NY2d at 366 ["As long as the agreement may be fairly and reasonably interpreted such that it may be performed within a year, the Statute of Frauds will not act as a bar however unexpected, unlikely, or even improbably that such performance will occur during that time frame"] [internal quotation marks and citations omitted]).

Defendant next argues that he is entitled to summary judgment on his unjust enrichment counterclaim, maintaining that he has submitted uncontroverted evidence that he paid two months of Plaintiff's rent, that he did so outside of any contractual obligation to Plaintiff, and that Plaintiff never repaid him. A party asserting unjust enrichment must show "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" (*Mandarin*

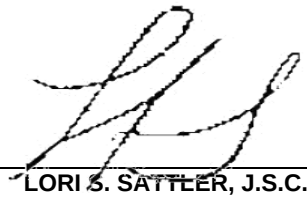
Trading Ltd. v Wildenstein, 16 NY3d 173, 182 [2011] [internal citations and quotations omitted]). Although it is undisputed that Defendant paid two months of Plaintiff's rent, the parties offer conflicting accounts of these payments. Plaintiff contends that these payments were compensation for back rent (Plaintiff EBT at 84-85), while Defendant claims that he was under no obligation to make these payments on Plaintiff's behalf (NYSCEF Doc. No. 36, Defendant Aff ¶ 20). There is a material issue of fact as to whether Plaintiff was enriched at all, and therefore the Court denies this branch of Defendant's motion.

Accordingly, it is hereby:

ORDERED that the motion is denied; and it is further

ORDERED that the parties shall appear for a Pre-Trial Conference on April 17, 2023 at 10:00 AM via Teams.

This constitutes the Decision and Order of the Court.



3/1/2024
DATE

LORI S. SATTLER, 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