

Catalyst Dev. Group LLC v Basso 56 Inc.

2024 NY Slip Op 30867(U)

March 13, 2024

Supreme Court, New York County

Docket Number: Index No. 656530/2022

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

CATALYST DEVELOPMENT GROUP LLC,

Plaintiff,

- v -

BASSO 56 INC., ALEKSANDER KOLA, KOZINN 238 LLC, JOHN DOE NO. 1 THROUGH JOHN DOE NO. 10, INCLUSIVE, THE LAST KNOWN NAMES BEING FICTITIOUS AND UNKNOWN TO PLAINTIFFS, SUCH ENTITIES INTENDED TO BE

Defendant.

-----X

INDEX NO. 656530/2022

MOTION DATE 07/13/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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

were read on this motion to/for DISMISSAL.

The allegations in the Complaint are as follows. Plaintiff is a construction company and contractor. Defendant Baso 56 Inc. ("Baso 56") is a company that was seeking to develop a restaurant at 240 West 56th Street, New York, NY. Defendant Aleksander Kola ("Kola") is a principal of Baso 56.

Plaintiff and Baso 56 entered into a contract whereby Plaintiff was to buildout Baso 56's restaurant. There were various change orders made which increased the original contract price for the buildout. Baso 56 made partial but not full payment for the amounts Plaintiff claims it is owed. Plaintiff brings this action on, inter alia, theories of breach of contract (solely against Baso 56), fraudulent inducement (solely against Mr. Kola), quantum meruit (against all defendants), unjust enrichment (against all defendants), and account stated (solely against Baso 56).

1 The Court would like to thank Jason Lowe, Esq. for his assistance in this matter.

Before the Court is Defendant Baso 56 and Mr. Kola's motion to dismiss.²

Discussion

Motion to Dismiss Standard

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. (See *Avgush v Town of Yorktown*, 303 AD2d 340, 755 N.Y.S.2d 647 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD.2d 348, 756 N.Y.S.2d 96 [2d Dept 2003]). "The test on a motion to dismiss for insufficiency of the pleadings is not whether the plaintiff has artfully drafted the complaint but whether, deeming the complaint to allege whatever can be reasonably implied from its statements, a cause of action can be sustained." (*Pepler v Coyne*, 33 AD3d 434, 435, 822 N.Y.S.2d 516 [1st Dept 2006], citing *Stendig, Inc. v Thom Rock Realty Co.*, 163 AD2d 46, 48, 558 N.Y.S.2d 917 [1st Dept 1990]).

Defendant Kola's Motion To Dismiss The Fraudulent Inducement Cause of Action

The Complaint brings a fraudulent inducement cause of action against Mr. Kola in his individual capacity. "The elements of a cause of action for fraud require a material representation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance . . . and damages." *Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 N.Y.3d 553, 559, 910 N.E.2d 976, 883 N.Y.S.2d 147 [2009]. The elements of fraudulent inducement are substantially the same. See *Perrotti v. Becker, Glynn, Melamed & Muffly LLP*, 82 A.D.3d 495, 498, 918 N.Y.S.2d 423 (1st Dep't 2011). "A cause of action for fraudulent concealment requires, in addition . . . an allegation that the defendant had a duty to disclose material information and that it failed to do

² There is an additional Defendant who neither joined nor opposed this motion to dismiss.

so." *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 944 N.E.2d 1104, 919 N.Y.S.2d 465 [2011].

The allegations in the Complaint regarding fraudulent concealment are that Mr. Kola concealed that Baso 56 had adequate financing in place to pay for the work Plaintiff was contracted to perform for Baso 56. Initially, there are no detailed allegations as to how Plaintiff detrimentally relied on this information or how Plaintiff was injured by Baso 56 having adequate financing to pay Plaintiff. Nevertheless, Plaintiff also fails to allege any special relationship which would require Mr. Kola to reveal the adequacy of Baso 56's financing to Plaintiff. Thus, Plaintiff has failed to allege a cause of action for fraudulent inducement.

Defendant Kola's Motion to Dismiss the Quasi Contractual Causes of Action

The Complaint alleges a quantum meruit cause of action and an unjust enrichment cause of action against Defendant Kola. However, the allegations regard doing work for the benefit of Baso 56, not Mr. Kola. Thus, there is no basis for asserting these quasi-contract claims against Mr. Kola.

In opposition to the motion to dismiss, Plaintiff argues that the quasi-contract claims should survive with regards to Mr. Kola on a theory of piercing the corporate veil. "[P]iercing the corporate veil requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury." *Shisgal v. Brown*, 21 AD3d 845, 848, 801 N.Y.S.2d 581 [1st Dep't 2005].

Plaintiff points to no allegations in the Complaint regarding Mr. Kola completely dominating Baso 56. Further, Plaintiff fails to point to allegations in the Complaint which shows that Mr. Kola used domination of Baso 56 to commit a wrong against Plaintiff which resulted in

Plaintiff being injured. Rather, the allegations in the Complaint point to Plaintiff doing construction work for Baso 56 and Baso 56 failing to pay for that work. These allegations are insufficient to assert a quasi-contractual cause of action against Mr. Kola.

No causes of action are asserted against Mr. Kola other than the second (fraudulent inducement), fourth (quantum meriut), and the fifth (unjust enrichment) causes of action. Since all of these causes of action are being dismissed with respect to Mr. Kola, the Complaint in its entirety is dismissed with respect to Mr. Kola.

Baso 56's Motion to Dismiss the Quasi Contractual Causes of Action

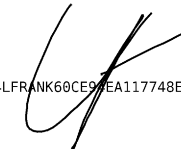
Baso 56 moves to dismiss the quasi-contractual claims asserted against it. The third cause of action is for breach of contract against Baso 56. The fourth and fifth causes of action are quasi-contract causes of action seeking relief for the same transactions as the breach of contract cause of action. Thus, the fourth and fifth causes of action are duplicative of the breach of contract cause of action and are therefore dismissed. *Apfel v. Prudential-Bache Sec., Inc.*, 81 N.Y.2d 470, 479, 616 N.E.2d 1095, 600 N.Y.S.2d 433 [1993][Appellate Division erred in reinstating plaintiffs' unjust enrichment claim on a quasi-contract theory. The transaction is controlled by the express agreement of the parties and their rights and liabilities are to be determined solely on theories of breach of contract].

Accordingly, it is hereby

ORDERED that Defendant Aleksander Kola's motion to dismiss is GRANTED and the Complaint is dismissed with regards to Aleksander Kola in its entirety; and it is further

ORDERED that, Defendant Baso 56 Inc.'s motion to dismiss the fourth and fifth causes is GRANTED and the fourth and fifth causes of action as asserted against Baso 56 Inc. are dismissed; and it is further

ORDERED that all other requested relief is denied.


20240313132804LFRANK60CE97EA117748E6A391CBA34B97C8E1

3/13/2024
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE