

Cityview Partners, LLC v Lucas

2024 NY Slip Op 32011(U)

June 11, 2024

Supreme Court, Kings County

Docket Number: Index No. 524665/2023

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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CITYVIEW PARTNERS, LLC,

Plaintiff,

Decision and order

- against -

Index No. 524665/2023

TED LUCAS, RYAN BURKE, CHRIS BROWN,
SUPERFEST MIAMI, LLC, and VIEW LIVE, LLC,

Defendants,

June 11, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #2, #3 & #4

The defendants have moved and cross-moved pursuant to CPLR §3211 seeking to dismiss the complaint for the failure to allege any causes of action and for lack of jurisdiction. The plaintiff opposes the motions. Papers were submitted by the parties and arguments were held. After reviewing all the arguments this court now makes the following determination.

According to the Summons with Notice on January 31, 2020 the defendants (except Chris Brown) entered into a contract with the plaintiff wherein the plaintiff paid the defendants funds in exchange for the right to receive receipts from a concert to be performed in Miami. The concert never took place, however, the Summons alleges defendant Chris Brown was already paid in advance. Further, the Summons alleges the defendants received advance payments which should have been used to repay the plaintiff and instead were used for the planning of another concert. The defendants have now all moved seeking to dismiss the complaint. Defendant Lucas asserts the court does not maintain any jurisdiction over him and the complaint fails to

allege any causes of action. Further, Lucas argues he was not validly served with process. Defendant Brown moves seeking to dismiss on the grounds he was not properly served with process. As noted the motions are opposed.

Conclusions of Law

It is well settled that a summons with notice is not a pleading and thus a motion to dismiss for the failure to state a cause of action cannot be entertained (see, (Petrova v. Investors Capital, 24 Misc3d 977, 879 NYS2d 908 [Supreme Court Kings County 2009])). Likewise, motions concerning long-arm jurisdiction may not be entertained. As the court explained in Fraley v Desilu Productions, Inc., 23 AD2d 79, 258 NYS2d 294 [1st Dept., 1965] "without a complaint it is impossible to know whether plaintiff has a valid basis of jurisdiction under the 'long arm' statute" (id). Thus, the motion to dismiss is denied without prejudice. Where a motion filed is premature and cannot be decided, then the filing of another motion does not violate the single motion rule. Thus, "the indefiniteness of the pleading precluded defendants from seeking dismissal of the fourth claim at that point, and thus the latest motion to dismiss did not contravene the single-motion rule of CPLR 3211(e)" (see, Lemberg v. John Blair Communications Inc., 258 AD2d 291, 685 NYS2d 435 [1st Dept., 1999])). Consequently, a motion to dismiss

may be filed after a complaint has been served. The plaintiff's request to deny such filing of any further motions to dismiss is denied.

However, the court may entertain any motion to dismiss which is not based upon the substance of any complaint, therefore, motions based upon inadequate service may properly be considered (Catalano v. L.H. Pelican Properties LLC, 73 Misc3d 1213(A), 154 NYS3d 582 [Supreme Court Kings County 2021]).

The defendant Lucas argues that service of the summons and complaint in this lawsuit was improper because it was served upon an employee of defendants place of employment and that such service is improper (see, Clauro Enterprises, v. Aragon Galiano Holdings, LLC, 16 So3d 1009 [District Court of Appeals of Florida, 3rd District 2009]). However, this court explicitly permitted the service upon Lucas at the address noted in an order dated January 30, 2024 by February 23, 2024 [NYSCEF Doc. No. 17]. Evidence presented demonstrates that service was effectuated by that date. Consequently, the motion seeking to dismiss the action based upon improper service only as to Lucas is denied.


Turning to defendant Brown, the order noted permitted service upon Brown at a residence in California and at the employment locations of the other defendants. Even assuming the propriety of service at locations that have no connection to Brown, the evidence submitted demonstrates that service was never

effectuated upon Brown within the time allotted by the order. Consequently, jurisdiction was never conferred upon Brown and the motion seeking to dismiss the action for lack of service is granted.

So ordered.

ENTER:

DATED: June 11, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC