Finn v GMC Mercantile Corp.
2024 NY Slip Op 32901(U)
August 14, 2024
Supreme Court, New York County
Docket Number: Index No. 651965/2016
Judge: Emily Morales-Minerva

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA **PART** 42M

Justice

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LESLEY M FINN,

Plaintiff,

- v -

GMC MERCANTILE CORPORATION,

Defendant,

CLIFF CHAN,

Defendant-Movant.

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INDEX NO. 651965/2016

MOTION DATE 05/17/2024

MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 84, 85, 87, 89 were read on this motion to/for REARGUMENT/RECONSIDERATION.

APPEARANCES:

Filosa Graff LLP, New York, New York (Gregory Nicholas Filosa, Esq., of counsel) for Plaintiff.

Eisenberg & Carton, Melville, New York (Lloyd M. Eisenberg, Esq., of counsel) for defendant-movant.

HON. EMILY MORALES-MINERVA:

In this action for failure to pay wages and breach of contract, defendant CLIFF CHAN moves, pursuant to CPLR § 2221 (d),[1] for leave to reargue a prior decision of this Court, dated April 8, 2024, which denied CHAN's motion to dismiss the amended complaint as time barred.

[1] A party may move to reargue a motion where the court allegedly "overlooked or misapprehended" the law or the facts (CPLR § 2221 [d][2]).

Plaintiff LESLEY M. FINN does not oppose CHAN's motion to reargue. However, plaintiff asks the Court to deny the motion to dismiss, contending that the Court (N. Bannon, J.S.C.) tolled the applicable statute of limitations from at or around 2018 until at or around 2023. In the alternative, plaintiff contends the relation back doctrine permits the claims against CHAN, despite expiration of the statute of limitations.

For the reasons set forth below, this Court grants CHAN's motion for leave to reargue, and upon granting such, dismisses plaintiff's amended complaint against CLIFF CHAN as time barred.

ANALYSIS

Motion to Reargue

Granting a motion to reargue is within the discretion of the court, whose decision the moving party seeks to reargue (Pro Brokerage, Inc. v Home Ins. Co., 99 AD2d 971, 971 [1st Dept 1984]; citing Foley v Roche, 68 AD2d 558, 567 [1st Dept 1979]; see also William P. Pahl Equip. Corp. v Kassis, 182 AD2d 22 [1st Dept 1992])

A successful motion "shall be based upon matters of fact or law [that the court] allegedly overlooked or misapprehended . . . in determining the prior motion but shall not include any matters of fact not offered on the prior motion" (CPLR § 2221 [d] [2]). Motions to reargue are not vehicles for unsuccessful

parties "to argue once again the very questions previously decided" (see Pro Brokerage, Inc. 99 AD2d at 971; citing Foley 68 AD2d at 567; see also William P. Pahl Equip. Corp 182 AD2d 22).

Here, CHAN has met his burden of establishing that, in determining CHAN's motion to dismiss the amended complaint, the Court erroneously misapprehended certain dates key to its holding that the prior application was untimely. In correction of that error, let it be clear that plaintiff filed proof of nail-and-mail service of the subject amended complaint on December 07, 2023. Therefore, CHAN's motion to dismiss is timely, as it was filed January 16, 2024, (see CPLR § 308[4] [providing service is considered "complete" ten days after proof of service is filed]; see also CPLR § 320[a] [providing if service was made pursuant to CPLR § 308[4], the appearance shall be made within thirty days after service is complete]).

Motion to Dismiss

The Court will now address the substance of the motion to dismiss, pursuant to CPLR 3211 (a) (5), seeking dismissal of the amended complaint based on the statute of limitations.

Plaintiff opposes the motion, arguing that the statute of limitations has been tolled for several years and, in the alternative, arguing that the claims against defendant relate back to the initial complaint.

Statute of Limitations

Pursuant to CPLR § 213 (2), a claim for breach of contract is governed by a six-year statute of limitations. As a general principle, the statute of limitations begins to run when a cause of action accrues (see CPLR 203 [a]), that is, "when all of the facts necessary to the cause of action have occurred so that the party would be entitled to obtain relief in court" (Aetna Life & Cas. Co. v Nelson, 67 NY2d 169, 175 [1986]). In contract actions, a claim generally accrues at the time of breach (see Deutsche Bank Natl. Trst Co. v Flagstar Capital Mkts., 32 NY3d 139, 145 [2018], citing ACE Sec. Corp., Howm Equity Loan Trust, Series 2006-SL2 v DB Structured Prods., Inc., 25 NY3d 581 593-594 [2015]; Ely-Cruikshank Co. v Bank of Montreal, 81 NY2d 399, 403-404 [1993]).

Further, where "the claim is for payment of a sum of money allegedly owed pursuant to a contract, the cause of action accrues when the [party making the claim] possesses a legal right to demand payment," not when it makes the demand (Hahn

Automotive Warehouse, Inc. v American Zurich Ins. Co., 18 NY3d 765, 770 [2012]; see also G&Y Maintenance Corp. v McSam Hotel Group LLC, 222 AD3d 586 [2023]; Golden Tech. Mgt., LLC v NextGen Acquisition, Inc., 138 AD3d 625, 626 [1st Dept 2016], lv denied 28 NY3d 914 [2017]).

Here, no dispute exists that plaintiff's action for unpaid commissions and wages accrued, on October 02, 2015. Therefore, the six-year statute of limitations on this claim expired on October 01, 2021. However, plaintiff filed the amended complaint, asserting breach of contract and failure to pay wages against CHAN on September 14, 2023 -- about eight years later and two years past expiration of the limitations period. Therefore, the causes of action are time-barred.

Plaintiff's contention that the Court (N. Bannon, J.S.C.) tolled the statute of limitations in this action is unavailing (see CPLR 204 [a] [providing "(w)here the commencement of an action has been stayed by a court . . . the duration of the stay is not part of the time within which the action must be commenced]). That Court stayed only the "actions, efforts and proceedings by plaintiff, her agents and attorneys and any City Marshal to execute upon the Money Judgment and/or enforce the Money Judgment proceedings between plaintiff and GMC," not the proceeding (see NY St Elec Filing (NYSCEF) Doc. No. 35, Decision and Order, dated Aug. 13, 2018 [emphasis added]). In other

words, execution of the money judgment was stayed, as the motion to vacate the default judgment, and the action, remained pending.

Similarly unavailing is plaintiff's contention that the causes of action newly asserted against CHAN - several years after the default judgment and attempts to execute on said judgment -- relate back to the initial complaint for purposes of statute of limitations.

It is black letter law that, "[i]n an action which is commenced by filing, a claim is asserted in the complaint and interposed against the defendant or a co-defendant united in interest . . . when the action is commenced" (CPLR § 203 [c]). Further, "[a] claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading where interposed, unless the original pleading does not give notice of the transaction, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading" (id. at § 203 [f]).

Interpreting this language, and governing related precedent, the Court of Appeals recently made clear the prongs of the relation back doctrine, which are as follows (see Nemeth v K-Tooling, 40 NY3d 405, 410 [2023]).

> "The relation back doctrine applies when (1) the claims arise out of the same conduct, transaction or occurrence; (2) the new party is 'united in interest' with an original defendant and thus can be charged with such notice of commencement of the action such that the court concludes that the party will not be prejudiced against the action; and (3) the new party knew or should have known that, but for a mistaken omission, they would have been named in the initial pleading"

(id., 40 NY3d at 407-409; see also Higgins v City of New York, 144 AD3d 511, 513 [1st Dept 2016]).

Further, in applying the relation back doctrine, the court should not look beyond the four corners of the initial pleading to determine whether a new defendant was on notice of transactions or occurrences underlying the claims (34-06 73, LLC v Seneca Ins. Co., 39 NY3d 44, 51 [2022]). However, no similar prohibition appears to exist against the court looking beyond the initial pleading in determining if defendant "knew or should have known" that plaintiff mistakenly excluded him from the initial pleading (see generally id.; see also Nemeth, 40 NY3d at 413 to 414 [considering -- in finding that the plaintiff established the third prong of the relation back doctrine -- that the newly added defendant was previously named in a related proceeding which was at the heart of the amended complaint and that the newly added defendant signed key documents in dispute]).

Here, the initial complaint makes no mention of CHAN in any regard. Nowhere does it allege any broad or specific wrongdoing or affirmative action of CHAN in any capacity. Similarly, the subject contract, attached to the initial complaint, nowhere mentions CHAN by name or capacity as president of GMC, and the subject contract is signed by plaintiff and a person identified only as "Sara Smith" without signatory title or capacity (see NYSCEF Doc. No. 43, Contract).[2]

In sum, the bare bones nature of the initial complaint and supporting papers -- devoid of any alleged conduct by CHAN -- cannot be said to place him on notice of the transaction, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading" (CPLR § 203 [f]).

In any event, plaintiff does not appear to satisfy the second prong of the relation back doctrine -- that GMC and CHAN are "united in interest" (id.). Alleging that CHAN was or is the president of GMC, without more, does not automatically establish requisite unity. Further, other than alleging that CHAN may have been or once was the president of GMC, plaintiff makes no showing that GMC's and CHAN's interest "in the subject-

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[2] The entirety of the alleged contract provides: "1/5/2015 Agreement with Lesley Finn Salary 195,000 Health Insurance contribution for Family Plan will be covered by Lesley 1% commission from day 1 on all accounts regardless of sales person with the exception of Wal-Mart which will be treated as each order taken based on margin on all Junior's and Girls 3 Weeks paid vacation 3 months severance in the event of termination Reimbursed for all expenses, travel, meals, hotels, samples, etc."

matter [are] such that they stand or fall together and that judgment against one will similarly affect the other" (Vanderburg v. Brodman, 231 AD2d 146, 147-148, [1st Dept 1997] [internal quotation marks omitted]). The parties in question do not share exactly the same jural relationship, and there exists a possibility that CHAN could have defenses different from that of the corporation (see 130-10 Food Corp. v New York State Div. of Human Rights, 166 AD3d 962 [2d Dept 2018]; see also Higgins, 144 AD3d at 513; Zehnick v. Meadowbrook II Assocs., 20 AD3d 793, 796-797 [3d Dept 2005], appeal dismissed by, appeal denied by 5 NY3d 873 [2005]).

Indeed, in this very action, the two have already exercised different defenses. When plaintiff sought to amend the complaint, the Court (N. Bannon, J.S.C.) granted that motion without opposition of GMC (see NYSCEF Doc. No. 62, Decision and Order, dated September 14, 2023). However, once served with the amended complaint, pursuant to the same court's order, CHAN moved for dismissal of the amended complaint as time barred. If it were not for CHAN's defense independent from GMC, this application to dismiss would not be pending.

Plaintiff's reliance on Euroway Contr. Corp. v Mastermind Estate Dev. Corp. (59 AD3d 157, 158 [2009]) for a contrary finding seems misplaced. In that decision, the governing First Department, held that "the corporate defendants sought to be

added were united in interest with [the existing] defendant . . . [because the existing defendant was the] sole owner, shareholder, principal or agent of each proposed corporate defendant and he acted on their behalf with respect to day-to-day activities" (Euroway Contr. Corp., 59 AD3d at 158 [emphasis added]).

Plaintiff also failed to establish the third prong of the relation back doctrine -- that CHAN knew or should have known that, but for plaintiff's mistake, he would have been named in the initial pleading.

Again, the original complaint, dated in 2016, did not mention CHAN in any capacity and did not allege any action on CHAN's behalf. Further, about eight-years-ago, plaintiff moved for a default judgment on the initial complaint, setting forth its proof as to GMC only, and did not seek to add CHAN. Two years thereafter, upon receiving a default judgment, plaintiff sought to collect on said judgment against GMC, and did not seek to add CHAN and/or take any action to indicate that it mistakenly excluded CHAN.

Finally, when GMC moved to vacate the default judgment, plaintiff opposed the motion, requesting that the court modify the default judgment only to the extent of correcting the monetary damages awarded in plaintiff's favor (see NYSCEF Doc.

No. 38, affirmation in opposition to vacate default judgment of plaintiff's counsel, dated August 02, 2018).

Given these circumstances, taking place over an eight year period, it cannot fairly be said that CHAN had reason to know or knew that plaintiff meant to sue him personally along with GMC.

Accordingly, it is,

ORDERED, that defendant CLIFF CHAN's motion, pursuant to CPLR § 2221 (d), for leave to reargue a prior decision of this court, dated April 8, 2024, is granted, it is further

ORDERED that, upon granting such leave to reargue, defendant CLIFF CHAN's motion to dismiss plaintiff's complaint, pursuant to CPLR 3211(a)(5), is granted; and it is further

ORDERED that the amended complaint is dismissed.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

8/14/2024
DATE

EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE