

Morozov v US Health Mgt. Inc.

2024 NY Slip Op 33026(U)

August 26, 2024

Supreme Court, New York County

Docket Number: Index No. 652960/2021

Judge: Debra A. James

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

PRESENT: HON. DEBRA A. JAMES **PART 59**

Justice

-----X

EUGENE MOROZOV and AVALON VENTURES, INC.,

Plaintiffs,

- v -

US HEALTH MANAGEMENT INC., and HEALTH
MANAGEMENT ENTERPRISES INC.,

Defendants.

-----X

INDEX NO. 652960/2021

MOTION DATE 01/12/2024

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 57, 58, 75, 76, 78, 79

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 003) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of the defendants US Health Management Inc. and Health Management Enterprises Inc. that seeks summary judgment on their counterclaims and dismissal of the complaint of the plaintiffs Eugene Morozov and Avalon Ventures, Inc., (motion sequence number 003) is denied; and it is further

ORDERED that the motion of the plaintiffs Eugene Morozov and Avalon Ventures, Inc., that seeks summary judgment on their complaint and dismissal of the counterclaims of the defendants US

Health Management Inc. and Health Management Enterprises Inc. (motion sequence number 002) is granted in part, to the extent of granting partial summary judgment to plaintiffs Eugene Morozov and Avalon Ventures, Inc., as to liability on their complaint and granting dismissal of the counterclaims against them; and it is further

ORDERED that the motion of plaintiff is otherwise denied; and it is further

ORDERED that plaintiffs Eugene Morozov and Avalon Ventures, Inc., shall, within twenty (20) days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto and upon the Clerk of the General Clerk's Office; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website; and it is further

ORDERED, that as plaintiffs, on January 15, 2024, served and filed with such Clerk a note of issue and statement of readiness and paid the fee therefor (NYSCEF Document Number 077), such Clerk shall cause the matter to be placed upon the Trial Assignment Part (TAP) 40 calendar for an assessment of damages trial against defendants US Health Management Inc. and Health Management

Enterprises Inc. and in favor of the plaintiffs Eugene Morozov and Avalon Ventures, Inc.

DECISION

In this action, plaintiffs Eugene Morozov ("Morozov") and Avalon Ventures, Inc. ("Avalon") allege that defendants US Health Management Inc. ("UHM") and Health Management Enterprises Inc. ("HME") breached employment and services agreements, respectively, between them. Defendants interpose counterclaims alleging that it was plaintiffs who violated each such agreement and also seeking recovery on the theory of unjust enrichment.

Morozov Employment Agreements

On May 24, 2020, the defendants each executed employment agreements with Morozov for his employment as a part-time chief executive officer ("CEO"), each effective June 1, 2020 to May 17, 2023 (collectively, the "Employment Agreements"). (NYSCEF Document Number 045). The Employment Agreements are identical in terms and form, except for the contracting employer.

On March 10, 2021, UHM terminated Morozov for "poor performance" as CEO, effective March 12, 2021. (NYSCEF Document Number 006). At a board meeting on March 12, 2021, HME subsequently terminated Morozov, as well.

Morozov commenced this action alleging that the defendants breached their respective employment agreements with him, by failing to provide the required 30-day notice of termination, and

by failing to pay severance payments due under Section 4.2.1 of the Employment Agreements (the "Severance Provision").

The Severance Provision in the Employment Agreements provides, in pertinent part:

4.2.1. During the Initial Term, Company may terminate its employment relationship with Employee with thirty (30) days' written notice **if the Company determines, in its sole discretion, that Employee is not fully performing his duties.** If Company exercises its option to end the employment relationship under this Section, the Company will pay Employee his salary through the termination date and an additional four (4) months of salary payable in a lump sum within thirty (30) days of the termination date. Employee's annual bonus shall be equal to the amount due as of four months following the termination date. Employee shall be entitled to an additional four months of equity compensation following the termination date as described in section 3.3. Employee will not be eligible for any further compensation from Company.

(NYSCEF Document Number 45, **emphasis** added).

Thus, the parties expressly negotiated a contractual remedy in the event that the defendants determined that Morozov's performance as the CEO was inadequate. Specifically, the Severance Provision permitted defendants to terminate Morozov/s employment on such basis upon 30-days written notice. Such provision also stated that the Company would pay severance to Morozov in the amount of his salary through the termination date plus an additional four (4) months of salary payable in a lump sum.

The defendants contend that Morozov is not entitled to any severance payments because he only performed administrative or

ministerial tasks, and therefore failed to tender performance, as a part-time CEO, under the Employment Agreements.

Defendants have not proved such contention, as the record demonstrates that Morozov performed certain CEO duties. For example, by deposition, one of the members of defendants board of directors, admitted that the contractual terms required that he spend 40% of his time fulfilling his obligations under the Employment Agreement, and not 100% of his time as set forth in correspondence extrinsic to the contract and Morozov's communications with the board were "quite frequent". (Deposition transcript, NYSCEF Document Number 31, p 55:3 - 58:15)

Furthermore, the Employment Agreements delineates broad job responsibilities that arguably include the actions undertaken by Morozov, which are set forth in "Exhibit 'A' Job Responsibilities" to the Employment Agreements. (NYSCEF Document Number 45, p. 7-8, 16-17). In her deposition testimony, defendant's board member did not deny that the incorporation of legal entities, and engaging of accountants, which Morozov performed, "ensure[d] that the Company has appropriate systems to enable it to conduct its activities both lawfully and ethically" (Deposition transcript, NYSCEF Document Number 31, p. 60:2 - 64:15).

The defendants argue that Morozov performed certain administrative tasks, but assert that Morozov failed to perform any of his contracted obligations. However, the purported

obligations are general in nature, such as "to ensure that the Company maintains high standards of corporate citizenship and social responsibility wherever it does business" and in some instances, contemplate the defendants' involvement, such as "to lead, in conjunction with the Board, the development of the Company's strategy". By her deposition testimony, defendant's board member, as summarized above, admitted that Morozov performed those tasks, though inadequately. Moreover, it was impossible for Morozov to complete other obligations, such as those related to annual meetings or annual budgets, as he was terminated less than a year into his employment. As the Appellate Division, Third Department, held in New York State Elec. & Gas Corp. v State, 218 AD2d 868, 870 (3d Dept 1995)- "[n]onperformance of a required duty under a contract is not a breach of the contract until the performance is due".

With respect to defendants' counterclaim for Morozov's breach of the Employment Agreements, this court agrees with plaintiff that the integration clause defeats their claim for breach of pre-contractual promises to boost USHM revenues, allegedly made by Morozov. See Primex International Corp v Wal-Mart Stores, Inc, 89 NY2d 594, 600 (1997) ("A completely integrated contract precludes extrinsic proof to add to or vary its terms."

Finally, as stated in Bitterman v Gluck, 256 AD 336, 337 (1939):

If the employer has the unconditional right to terminate the contract of employment after certain notice, discharge has the effect of notice to terminate and damages are allowed only up to the time the contract would have terminated if notice had been given.

Therefore, in addition to the severance payment, Morozov is entitled to his salary for the period of March 1, 2021 through April 11, 2021.

Avalon Service Agreements

USHM and Avalon and HME and Avalon each entered into Service Agreements, effective August 1, 2020, and June 1, 2020, respectively. The terms of such Service Agreements were identical. Under such Service Agreements, each defendant agreed to pay Avalon:

an additional Five Thousand (\$5,000) as a cancellation fee ("Cancellation Fee"). It is expressly understood and agreed by the parties that the Cancellation Fee is fair and reasonable under the circumstances as Company is committing significant efforts and resources to Client for the duration of the Term.

By affidavit (NYSCEF Document Number 42, ¶ 48), one of defendant's principals argues that Morozov, who had no authority to act for Avalon, performed the services that Avalon was obligated to perform under each Service Agreements, to wit: (i) building valuable partnerships; (ii) business plan and model analysis; (iii) market and competition analysis; (iv) people management; (v) bringing in third party consulting services - accounting, tax, patents and trademark registration; and (vi) location expansion and growth strategy. As defendants thereby concede that Avalon's

work was performed, it has failed to establish any non-speculative damages arising out of Avalon's alleged breach. See Kenford Company, Inc. v County of Erie, 67 NY2d 257, 261 (1986) ("First, it must be demonstrated with certainty that such damages have been caused by the breach and second, the alleged loss must be capable of proof with reasonable certainty.") Therefore, Avalon is entitled to the Cancellation Fee set forth in the Services Agreements. In addition, based on the law as set forth in Bitterman, supra, Avalon is entitled to its pro-rated fees under the Service Agreements from March 1- April 11, 2021.

Paragraph 6.8 of each Employment Agreement provides "In the event of a dispute arising out of the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs". Similarly, paragraph 12 of each Services Agreement provides "In the event of legal action arising from or out of this Agreement. . . ., the trier thereof may award to any party any reasonable attorneys' fees and other costs incurred in connection therewith." Therefore, damages assessed against defendants shall include reasonable attorneys' fees and expenses incurred by each plaintiff in prosecuting this action.

With respect to the counterclaims for unjust enrichment interposed by defendants, such quasi contractual cause of action does not lie where there is a written agreement. See Clark-

Fitzpatrick, Inc. v Long Island Rail Road Company, 70 NY2d 382,
388 (1987).

Debra A. James

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8/26/2024

DATE

DEBRA A. JAMES, 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