

Technology Sys. Consulting, LLC v CoinSuites, LLC

2024 NY Slip Op 33380(U)

September 25, 2024

Supreme Court, New York County

Docket Number: Index No. 652486/2023

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

-----X

TECHNOLOGY SYSTEMS CONSULTING, LLC,

Plaintiff,

- v -

COINSUITES, LLC, MICHAEL WIENER, and MARTIN WOOD,

Defendants.

-----X

INDEX NO. 652486/2023

MOTION DATE 06/09/2023,
08/13/2023

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17

were read on this motion by individual defendants to

DISMISS THE COMPLAINT

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31

were read on this motion by the LLC defendant to

DISMISS THE COMPLAINT

LOUIS L. NOCK, J.

This action was commenced by summons and complaint filed May 23, 2023, asserting causes of action based on the seminal allegation that defendant CoinSuites, LLC (“CoinSuites”), has failed to fully pay for technological services furnished it by plaintiff pursuant to a contract annexed to the complaint as Exhibit “A” (NYSCEF Doc. No. 2) or, alternatively, pursuant to equitable doctrines of estoppel and quantum meruit. The complaint also asserts a cause of action asserting misappropriation by CoinSuites of plaintiff’s technological products for which CoinSuites did not fully pay.

Background

Motion sequence no. 001 is a motion by the individual defendants to dismiss the complaint as against them on the seminal theory that the underlying contract (Complaint Exhibit

“A”) is between plaintiff and CoinSuites only, to which they personally are not parties. The complaint alleges that they are part owners and managers of CoinSuites and summarily asserts that “are vicariously and/or jointly liable for Coinsuites[’] breach” (Complaint ¶¶ 4, 5, 36, 43, 47, 52, 57). Without any allegational detail whatsoever, the complaint gratuitously adds the conclusory allegation that the individual defendants are “*alter egos* of Coinsuites” (Complaint ¶ 65).

Motion sequence no. 002 is a motion by CoinSuites to dismiss the complaint as against it by challenging the enforceability of the supposed contract and, consequently, its forum selection clause identifying New York as the venue for any litigation. That motion also asserts that, in the absence of any enforceable New York forum selection clause, this court possesses no personal jurisdiction over any of the defendants because “No party is a New Yorker: they are from Ohio, Tennessee, Delaware, Georgia and Pennsylvania” (NYSCEF Doc. No. 22 at 9). This motion also informs the court that a prior action involving the instant dispute is pending in the State of Georgia.

The motions are consolidated herein for disposition.

Discussion

One of the main issues relevant to both motions is whether there actually is a contract which, if there is, vests jurisdiction in New York (*see*, NYSCEF Doc. No. 2 § 11.5). Subsequent to the filing of the within motion, counsel for the plaintiff submitted a copy of an order issued by the Superior Court of the State of Georgia, County of Fulton – the prior pending Georgia action referred to by CoinSuites in its within motion (*CoinSuites, LLC v Technology Sys. Consulting, LLC*, No. 2023CV376413) – dismissing said action (*see*, NYSCEF Doc. Nos. 30, 31) (the “Georgia Dismissal Order”). The Georgia Dismissal Order expressly found that the subject form

of contract is, indeed, a contract between plaintiff and CoinSuites and held that “The Parties’ Contract Specifies New York as the Sole Venue for” the within dispute between plaintiff and CoinSuites (Georgia Dismissal Order at 2). “The full faith and credit clause of the United States Constitution (U.S. Const., art IV, § 1) requires that the public acts, records, and judicial proceedings of each state be given full faith and credit in every other state” (*Balboa Capital Corp. v Plaza Auto Care, Inc.*, 178 AD3d 646, 647 [2019]). Thus, this court recognizes the finding and holding of the Georgia Dismissal Order.

Seeing as the subject contract is only between plaintiff and CoinSuites – and not including the individual defendants – no cause of action for breach of that contract can be stated as against the individual defendants. Insofar as the complaint feebly seeks to assert that the individual defendants are somehow bound up with CoinSuites’ contractual obligations under an “*alter ego*” theory, no detail whatsoever is found in the complaint that would support an exercise of piercing of the corporate veil (*see, Louis Monteleone Fibres, Ltd. v Hudson Baylor Brookhaven, LLC*, 228 AD3d 641, 644 [2d Dept 2024] [veil piercing requires “an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners”]). No facts or circumstances of that nature are alleged. Accordingly, the claims for breach of contract cannot be sustained as against the individual defendants. Moreover, the equitable claims asserted in the complaint cannot provide additional rights that circumvent the enforceable reach of a contract governing the substance of the dispute (*e.g., Clark-Fitzpatrick, Inc. v Long Island R.R. Co.*, 70 NY2d 382 [1987]).

The relief sought in the misappropriation claim is identical to that sought in the breach of contract claim – here, money damages (*see*, Complaint ¶ 57). A review of the misappropriation claim (Complaint ¶¶ 53-57) reveals no new facts other than the fact of the breach of contract.

The theory alleged is that because CoinSuites did not pay for plaintiff's technological services, its continued use of plaintiff's product is a "misappropriation" of that product. This would fall into the very same theory of direct and consequential damages available under the theory of breach of contract. The same goes for the breach of fiduciary duty claim which mirrors the breach of contract claim (*see, Federico v Brancato*, 144 AD3d 965 [2d Dept 2016]).

As for declaratory judgment (Complaint ¶¶ 48-52), "[a] cause of action for declaratory judgment is 'unnecessary and inappropriate when the plaintiff has an adequate, alternative remedy in another form of action, such as breach of contract'" (*Ithilien Realty Corp. v Ludlow Dev. LLC*, 140 AD3d 621, 622 [1st Dept 2016]). The bottom line here is, CoinSuites is alleged to have received the fruits of plaintiff's labors without paying plaintiff the contractually required price therefor. In other words – a breach of contract.

In sum, the only cause of action survivable here is the cause of action against CoinSuites for breach of contract. Any and all claims asserted against the individual defendants are dismissed by virtue of their status as non-parties to the contract, and in the absence of even the most rudimentary allegations relevant to piercing of the corporate veil.

As for CoinSuites' dismissal arguments grounded in lack of long-arm jurisdiction or *forum non-conveniens*, they are moot in light of the Georgia Dismissal Order which upheld the jurisdictional and venue significance of the New York forum selection clause found in the contract.

Accordingly, it is

ORDERED that the motion by individual defendants Michael Wiener and Martin Wood to dismiss the claims against them in the complaint (motion seq. no. 001) is granted in its entirety and, therefore, said claims are dismissed and said defendants shall be severed from this action; and it is further

ORDERED that the motion by defendant CoinSuites LLC to dismiss the claims asserted against it in the complaint (motion seq. no. 002) is granted to the extent of the second through seventh cause of action in the complaint and, therefore, those causes of action are dismissed; and it is further

ORDERED that defendant CoinSuites LLC shall file an answer herein on or before October 18, 2024.

This will constitute the decision and order of the court.

ENTER:



<u>9/25/2024</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE