

EW Studio, Inc. v AT&T Mobility LLC

2024 NY Slip Op 35197(U)

February 27, 2024

Supreme Court, Queens County

Docket Number: Index No. 712146/20

Judge: Leonard Livote

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.

SHORT FORM ORDER

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Leonard Livote

Supreme Court Justice



COMMERCIAL DIVISION PART A

-----X

EW STUDIO, INC., GARY LIANG, individually
and as officer of EW STUDIO, INC., and
YEECHIU CHUNG LIANG, individually and as
officer and shareholder of EW STUDIO, INC.,

Index No: 712146/20

Motion Date: 8/29/23

Plaintiffs,

Seq. No: 5

-against-

AT&T MOBILITY LLC, and YI JING TAN,
individually and as officer and shareholder of
SAGAR WIRELESS, INC., and SAGAR GROUP,
INC.,

Defendants.

-----X

The following papers numbered below read on this motion by Defendant AT&T Mobility LLC for an Order: (i) pursuant to CPLR § 3212, granting summary judgment dismissing each of the Causes of Action in the Complaint; and (ii) for such other and further relief as the Court deems just and proper.

PAPERS
NUMBERED

Notice of Motion, Affirmation, Affidavits
and Exhibits.....42-51

Cross Motion, Affirmation, Affidavits
and Exhibits.....

Answering Affirmations, Affidavits
And Exhibits.....53-101

Reply Affirmations, Affidavits
And Exhibits.....102-105

Other

Upon the foregoing papers, the motion is decided as set forth below.

In September 2006, Defendant AT&T Mobility LLC (“AT&T”) and Plaintiff EW Studio, Inc. (“EW Studio”) entered into a Dealer Agreement, which permitted EW Studio to sell AT&T’s products and services from one location, 41-40 Kissena Boulevard (the “41-40 Store”) in Flushing, Queens, New York. During EW Studio’s application to become an AT&T dealer, Defendant Yi Jing Tan (“Tan”) represented that she was EW Studio’s President and sole shareholder.

In March 2008, Tan requested that the Dealer Agreement be assigned from EW Studio to Defendant Sagar Wireless Group, Inc. (“Sagar”). In support of that request, Tan again represented that she was EW Studio’s President and sole shareholder. Based on Tan’s representation’s, AT&T consented to the assignment from EW Studio to Sagar.

In December 2008, the 41-40 Store abruptly closed, and it came to AT&T’s attention that Tan had transferred a 50% ownership interest in EW Studio to Plaintiff Yeechiu Chung Liang (“Mrs. Liang”) in June 2006, and that Mrs. Liang was EW Studio’s President, not Tan. In February 2009, AT&T notified Tan that it was terminating the Dealer Agreement immediately based upon Tan’s material misrepresentations to AT&T regarding EW Studio’s corporate structure and the 41-40 Store’s closure. Plaintiff then initiated the instant action against AT&T for breach of the Dealer Agreement. Plaintiffs’ claims against AT&T are principally based on the allegation that AT&T never effectively terminated the Dealer Agreement with EW Studio and breached the Dealer Agreement when it consented to the assignment to Sagar. AT&T argues it properly terminated and voided the Dealer Agreement upon discovering Tan’s misrepresentations. AT&T now moves for summary judgment.

Summary judgment is a drastic remedy that should only be employed when

there is no doubt as to the absence of any triable issues of a material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2nd Dept 2005]). "Issue finding, rather than issue determination is the court's function. If there is any doubt about the existence of a triable issue of fact, or a material issue of fact is arguable, summary judgment should be denied" (*Celardo v Bell*, 222 AD2d 547 [2d Dept 1995]). "In the context of a motion for summary judgment, the court is obliged to draw all reasonable inferences in favor of the non-moving party, and may not pass on issues of credibility" (*Rizzo v Lincoln Diner Corp.*, 215 AD2d 546 [2d Dept 2005]).

The party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of a triable issue of fact (CPLR Section 3212(b); *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Megafu v. Tower Ins. Co. of New York*, 73 A.D.3d 713 [2d Dept 2010]). However, once the moving party has satisfied this obligation, the burden then shifts; "the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action" (*Zuckerman v. City of New York*, supra).

Section 11 of the Dealer Agreement addresses disputes between the parties. The first relevant provision in Section 11 is a contractual-notice clause. Pursuant to this clause, Plaintiffs were required to notify AT&T in writing of any controversy or claim they had regarding the Dealer Agreement or Plaintiffs' relationship with AT&T within 120 days of the date Plaintiffs became aware or should have become aware of such grievance or dispute. Failure to timely notify AT&T of a dispute serves as an absolute bar to the institution of any proceedings that may have been based upon this grievance or dispute.

Here, Plaintiffs were on notice of their dispute with AT&T no later than March 21, 2008, when they filed a complaint against Tan and Sagar. Plaintiffs did not name AT&T as a defendant in the 2008 action. That filing specifically alleged that AT&T was no longer doing business with EW Studio, but was instead doing business with Sagar and, further, claimed that Tan and Sagar had induced AT&T to "violate, repudiate and breach" the Dealer Agreement. These are the same allegations underlying Plaintiffs' present Complaint. Thus, pursuant to Section 11 of the Dealer Agreement, Plaintiffs were required to provide written notice to AT&T no later than July 19, 2008. Plaintiffs did not provide written notice of their dispute to AT&T until November 24, 2008, well past the date required by the Dealer Agreement. Accordingly, Plaintiffs' present claims against AT&T are contractually barred, and it is

ORDERED, that summary judgment is granted in favor of Defendant AT&T Mobility LLC; and it is further

ORDERED, that Plaintiffs' case against Defendant AT&T Mobility LLC is dismissed; and it is further

ORDERED, that the caption is amended as follows to reflect that AT&T Mobility LLC is no longer a party to this case:

-----X
EW STUDIO, INC., GARY LIANG, individually
and as officer of EW STUDIO, INC., and
YEECHIU CHUNG LIANG, individually
and as officer and shareholder of EW STUDIO, INC.,

Plaintiffs,

-against-

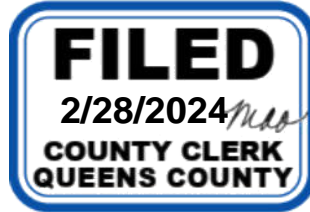
YI JING TAN, individually and as officer
and shareholder of SAGAR WIRELESS, INC.,
and SAGAR GROUP, INC.,


Defendants.

-----X

This constitutes the Order of the Court.

Dated: 2/27/2024





Leonard Livote, J.S.C.