

Balestra v Wonderfield, LLC.

2025 NY Slip Op 31991(U)

May 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 527517/2024

Judge: Wavny Toussaint

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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 23rd day of May, 2025.

P R E S E N T:

HON. WAVNY TOUSSAINT,
Justice.

-----X
CHRISTOPHER BALESTRA,

Plaintiff,

- against -

WONDERFIELD, LLC. and JOSHUA ABEHSERA,

Defendants.

-----X

Index No. 527517/2024

DECISION AND ORDER

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/ and Affidavits (Affirmations) Annexed	<u>50-51</u>
Cross Motion and Affidavits (Affirmation) Annexed	<u> </u>
Answers/Opposing Affidavits (Affirmations)	<u>53-60</u>
Reply Affidavits (Affirmations)	<u>61</u>
Affidavit (Affirmation)	<u> </u>
Other Papers	<u> </u>

Upon the foregoing papers, defendants Wonderfield LLC (“Wonderfield”) and Joshua Abehsera (“Abehsera”) move (Seq. 03) for an order: dismissing the complaint filed by plaintiff Christopher Balestra (“Balestra”), pursuant to CPLR § § 3211(a)(1), (7), and (10), on the grounds that plaintiff failed to state a valid claim against Wonderfield, failed to allege facts

sufficient to pierce the corporate veil against Abehsera, and in any event, plaintiff's claim does not fall under the protections afforded to employees under New York Labor Law § 190 or a freelancer under the Freelance Isn't Free Act. Defendants further allege plaintiff failed to join necessary and indispensable parties, rendering this action defective. Plaintiff opposes the motion.

BACKGROUND

This is an action arising from an agreement between the plaintiff, Balestra, and defendants, Wonderfield and Abehsera, executed on or about February 18, 2023. Plaintiff was a freelance producer doing business as Additional Content, LLC. Defendant, Wonderfield is a marketing and creative design agency and defendant Abehsera is the owner, founder, principal, and managing director of Wonderfield, LLC. Under the terms of the agreement, plaintiff was tasked with producing a series of video marketing ads for defendant's client, Flow Property. The production was to take place over the course of eight (8) days across four (4) different cities between February 19, 2023, and March 4, 2023.

On or about February 3, 2023, plaintiff sent the defendants a quote for \$37,900.00 for the production. Defendants accepted and paid plaintiff a deposit of \$15,160.00. The agreement was formally signed on February 18, 2023. Pursuant to the agreement, plaintiff was responsible for managing shot lists, overseeing the production team, and coordinating the necessary equipment for the video shoots. Defendants, on the other hand, were responsible for scheduling, hiring talent, and providing travel, transportation, lodging, and shot lists.

On February 19, 2023, plaintiff began production on the project. On February 23, 2023, defendants changed the production schedule and informed plaintiff that the remaining shoots would be rescheduled. Despite this notification, defendants failed to reschedule the remaining

shoots. Shortly thereafter, communication between the parties broke down.

As a result of defendant's failure to reschedule the shoots and the lack of communication, plaintiff commenced this action seeking a judgment against defendants for unpaid wages. In his Verified Complaint, plaintiff alleges that defendants failed to compensate him for services rendered on the project and approved reimbursements. Plaintiff further alleges that in reliance on defendants' assurances that the remaining shoots would be rescheduled, he turned down opportunities to contract with other prospective clients to keep his availability open to fulfil his obligations under the agreement with defendants.

THE PARTIES' CONTENTIONS

Defendant's Motion to Dismiss

On January 30, 2025, defendants filed a pre-answer motion to dismiss plaintiff's complaint in its entirety (NYSCEF Doc. No. 51). Defendants argue that plaintiff failed to state a valid claim against Wonderfield as he did not have employee status within the company and thus does not qualify for the protections afforded to employees under New York law (*id.* at 5). Furthermore, defendants argue, the Freelance Isn't Free Act does not apply since the contract was executed prior to FIFA's effective date of August 28, 2024, and FIFA only governs contracts signed on or after that date (NYC Admin Code § 20-927).

Defendants also assert that plaintiff does not meet the criteria of a freelancer under FIFA (*id.*). Defendant states that FIFA defines a "freelance worker" as "any natural person or organization composed of no more than one natural person," and that plaintiff is ineligible for FIFA protections because he worked with two other independent contractors as part of a collective entity operating under the name "Additional Content" (*id.*).

As to Abehsera, defendants argue that plaintiff failed to allege facts sufficient to justify

piercing the corporate veil to impose liability on Abehsera personally (*id.* at 1-3). Defendant argues that Abehsera is not a party to the contract as an individual, as he is a signatory only in his capacity as Principal of Wonderfield, LLC (*id.* at 2). Additionally defendants contend, plaintiff's complaint offers conclusory allegations of control and domination without including specific acts of fraud, bad faith, self-dealing, or misconduct to illustrate how Abehsera abused the corporate form for his own personal gain. (*id.*).

Defendants also argue that the complaint should be dismissed because plaintiff failed to join necessary and indispensable parties as plaintiffs in the action (*id.* at 3-5). Defendants allege that there were multiple individuals who signed the agreement doing business as "Additional Content," but plaintiff commenced this action exclusively in his name (*Id.*). Defendants argue that their absence deprives the court of the ability to fully adjudicate this action and creates a risk of inconsistent rulings and multiple litigations (*id.*). Additionally, defendants contend that joinder is essential because the other signatories have direct financial and contractual interests that would be impacted by a judgement (*id.*).

Defendants also argue that plaintiff's claim of quantum meruit and unjust enrichment must be dismissed as duplicative of the breach of contract claim (*id.* at 5-6). Defendants assert that both claims seek the same amounts of damages based on the same set of facts of his contract claim and when a valid contract governs the subject matter in dispute, quasi-contractual claims cannot survive (*id.*).

Plaintiff's Opposition to Defendant's Motion to Dismiss

In opposition to the defendants' assertion, plaintiff contends that the claims against Wonderfield should not be dismissed for failure to state a claim because New York Labor Law § 190 ("§ 190") applies to his situation (NYSCEF Doc. No. 53). Plaintiff contends that he

qualifies as an employee under § 190(2), which broadly defines an “employee” as “any person employed for hire by an employer in any employment” and further states that an employment relationship exists when an employer controls important aspects of the services performed, other than the results and means (*id.* at 4). Plaintiff maintains that he fits this definition because defendants exercised substantial control over the project throughout the pre-production, production, and post-production processes, extending beyond merely controlling the results and means (*id.*).

Moreover, plaintiff asserts that defendant’s claims that FIFA does not apply is without merit as they mistakenly rely on the recent extension of the New York State FIFA which became effective on August 28, 2024, instead of the New York City FIFA, which took effect May 15, 2017 (*id.*). As such, plaintiff contends that the City’s FIFA applies to his case, not the recently amended state law (*id.*).

As to Abehsera, plaintiff argues that the complaint presents sufficient facts to establish a prima facie case for piercing the corporate veil at this stage in the litigation. (*id.* at 1-3). Specifically, plaintiff alleges that Abehsera directly supervised him and misled him to believe that the remaining shoot was being rescheduled and that he would receive compensation for his services (*id.*). Plaintiff also alleges that Wonderfield employees redirected his communications to Abehsera and subsequently failed to honor his commitment to reimburse plaintiff for travel expenses incurred by him and the other signatories (*id.*). Further, plaintiff argues that the issue of piercing the corporate veil is inappropriate for resolution in a pre-answer, pre-discovery motion to dismiss (*id.*). Notably, plaintiff emphasizes that veil piercing is an alternate means of recovery, should discovery reveal that Wonderfield is inadequately capitalized (*id.*).

Additionally, while plaintiff acknowledges that he and the two other signatories operated under the name Additional Content, LLC, he argues that the entity was not a fully formed corporation at the time the contract was executed (*id.* at 4-5). Plaintiff asserts that Additional Content, LLC, was not established until a month after the contract took effect on March 9, 2023 (*id.*). Plaintiff also contends that the structure of the contract and communication with defendants reflects the intent of the other two signatories to be treated as individual freelancers, not as members of a corporate entity (*id.*). Nevertheless, plaintiff notes that the other two signatories are aware of the present action and are ready to assist in any way, including by joining the action should the Court deem it necessary (*id.* 3-4).

Plaintiff further argues that the quantum meruit and unjust enrichment claims are not duplicative of the breach of contract claim, as they were pleaded in the alternative in the event the Court determines that no enforceable contract existed between plaintiff and defendants (*id.* at 5-6).

Defendants' Reply

In their reply, defendants maintain that all claims against Abehsera should be dismissed because plaintiff failed to allege sufficient facts to satisfy elements of a veil piercing claim (NYSCEF Doc. No. 61). Defendants argue that “mere control or decision-making authority is insufficient to disregard the corporate entity” (*id.* at 1-2). Additionally, defendants argue that CPLR § 3211(a) requires the joinder of all necessary parties, and the willingness of the other two signatories to participate in the action does not fulfill this requirement (*id.* at 2). Defendants further argue that the structure of the contract has no bearing on the applicability of FIFA, as the statute clearly defines a freelancer as a natural person, “whether or not incorporated or employing a trade name that is hired or trained as an independent contract[.]”

(*id.*). Defendants claim that since plaintiff and the other signatories operated collectively, they do not meet FIFA criteria. (*id.*). Lastly, defendants argue that plaintiff's opposition improperly attempts to amend the Complaint by introducing new facts not previously alleged (*id.* at 2-3).

DISCUSSION

Standard of Review

“ ‘On a [pre-answer] motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the Court must afford the complaint a liberal construction, accept the facts as alleged in the complaint as true, accord the plaintiff[] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory’ ” (*Bd. of Managers of 37, 39 Madison St. Condominium v. 31 Madison Dev., LLC*, 230 AD3d 1214 [2d Dept 2024] quoting *Gold v. 22 St. Felix, LLC*, 219 AD3d 588, 590 [2023]). “The criterion is whether the proponent of [a] pleading has a cause of action, not whether he [or she] has stated one” (*id.* quoting *Leon v. Martinez*, 84 NY2d 83, 88 [1994]). The Court is also “permitted to consider evidentiary material submitted by a defendant in support of a motion to dismiss (*Sokol v. Leader*, 74 AD3d 1180, 1181 [2d Dept 2010]). However, “affidavits submitted by a defendant ‘will almost never warrant dismissal under CPLR § 3211 unless they “establish conclusively that the plaintiff has no cause of action”’ (*id.* at 1182).

“A motion to dismiss a complaint pursuant to CPLR § 3211(a)(1) may be granted only if the documentary evidence submitted by the moving party utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law” (*Mohawk Constr. & Supply Co., Inc. v. Walsh/Consigli JV*, 222 AD3d 965, 966-967

[2023], quoting *Marinelli v. Sullivan Papain Block McGrath & Cannavo, P.C.*, 205 AD3d 714, 715 [2022]).

Veil piercing claim

To pierce the corporate veil, a plaintiff must establish: (1) that the owners exercised complete domination over the corporation with respect to the transaction at issue, and (2) that such domination was used to commit a fraud or wrong against the plaintiff resulting in injury. *Arben Corp. v Durastone, LLC*, 186 AD3d 599, 600 [2d Dept 2020]. Here, the complaint specifically alleges that the defendant Abehsera was the sole owner and principal of Wonderfield and exercised total control over the company at the time the parties entered into the agreement. Plaintiff further alleges that Wonderfield was contractually responsible for coordinating travel and accommodations for the production crew, and that he was never reimbursed after incurring such expenses. Given that defendants failed to submit evidence to rebut plaintiff's veil piercing claim and taking the plaintiff's allegations as true, the complaint sufficient pleads a cognizable veil-piercing claim. Therefore, dismissal at this early stage is premature.

New York Labor Law and FIFA

In contrast, the Court also finds that plaintiff's allegation that he was an employee of Wonderfield insufficient. Under New York Labor Law § 190, an employee is defined as "any person employed for hire by an employer in any employment." While this definition is broad, the Second Department has established that it does not extend to independent contractors (*Hernandez v Chefs Diet Delivery, LLC*, 81 AD3d 596 [2d Dept 2011]). Additionally, under NYC Admin Code § 20-927, a freelance worker is defined as "any natural person or any organization composed of no more than one natural person, whether or not incorporated or

employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation.”

Here, plaintiff acknowledges operating collectively under the DBA “Additional Content” with two other individuals. As such, plaintiff has not adequately alleged that he retains employee status under New York Labor Law § 190 or that he qualifies as a freelance worker under FIFA. Therefore, defendant’s motion to dismiss the two causes of action is granted.

Joinder of Parties

CPLR § 3211(a)(10) authorizes dismissal where a necessary party has not been joined. CPLR § 1001 limits indispensable parties to situations where the Court’s determination will adversely affect the rights of nonparties (*Blatt v Johar*, 177 AD3d 634, 635 [2d Dept 2019]). Thus, “[w]here the party “is subject to the jurisdiction of the [C]ourt, the [C]ourt shall order him [or her] summoned” (*Deutsche Bank Natl. Tr. Co. v Bandalos*, 173 AD3d 1136, 1137 [2d Dept 2019]). Here, two additional signatories to the agreement were not joined as plaintiffs, even though the compensation for their services lies at the core of this case. Consequently, the court finds that these individuals are necessary parties and should be joined pursuant to CPLR 1001(a).

Quantum meruit and unjust enrichment claims

Plaintiff also asserts claims for quantum meruit and unjust enrichment. However, “[t]he existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter” (*Clark-Fitzpatrick, Inc. v Long Is. R. Co.*, 70 NY2d 382, 388 [1987]). As it is undisputed that valid agreement exists between the parties, plaintiff’s claims for quantum

meruit and unjust enrichment are barred and therefore dismissed.


CONCLUSION

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss (Seq. 03) is granted to the extent of dismissing the cause of actions asserted under NYC Admin Code § 20-927, New York Labor Law § 190, and for quantum meruit and unjust enrichment; and it is further

ORDERED that Maximilian Papadopoulos and David Grigorian are to be joined as necessary parties pursuant to CPLR 1001(a) within 60 days of entry of this order; and the motion is otherwise denied.

This constitutes the decision and order of the Court.

ENTER


J. S. C.
Hon. Wavny Toussaint
J.S.C.

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