

J.S. Held, LLC v LQD Bus. Fin., LLC

2025 NY Slip Op 32433(U)

July 2, 2025

Supreme Court, New York County

Docket Number: Index No. 651325/2023

Judge: Nicholas W. Moyne

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

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

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J.S. HELD, LLC

Plaintiff,

- v -

LQD BUSINESS FINANCE, LLC,

Defendant.

-----X

INDEX NO. 651325/2023

MOTION DATE 05/06/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 19 were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

Defendant, LQD business finance, LLC (“LQD”), moves pursuant to CPLR § 3211(a)(7) to dismiss the complaint. The plaintiff, J.S. Held, LLC (“JSH”) opposes the motion.

Background

This action revolves around defendant’s failure to pay for expert forensic accounting and consulting services performed by JSH in a bankruptcy proceeding filed against LQD. The parties had an expert services agreement (the “agreement” or “contract”) (NYSCEF Doc. No. 2). The complaint alleges five causes of action: 1) breach of contract pursuant to CPLR § 3016(f); 2) breach of contract; 3) account stated; 4) open account; and 5) unjust enrichment. JSH is seeking \$209,064.70

Motion to dismiss pursuant to CPLR § 3211(a)(7)

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [internal citation omitted]; see also *Morone v Morone*, 50 NY2d 481 [1980]). “If any portion of a cause of action is sufficient, it should not be dismissed on motion” (*Lacks v Lacks*, 12 NY2d 268, 271 [1963]; see also *Abrams v Allen*, 297 NY 52, 54 [1947] [“If in any aspect upon the facts stated plaintiffs are entitled to a recovery, dismissal was, of course, improper”]). In assessing a motion under CPLR § 3211(a)(7) a court may freely consider affidavits submitted by the plaintiff to remedy any defects in

the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

The motion to dismiss must be granted as to the fourth cause of action and otherwise denied

The defendant contends that the complaint must be dismissed for several reasons. First, LQD contends that the agreement was breached by JSH because the invoices were sent to their attorney rather than directly to LQD – paragraph 5 of the agreement indicates that invoices would be sent to the client (LQD) on a monthly basis (see NYSCEF Doc. No. 2). LQD contends that, after the deadline to retain a new expert had expired, JSH refused to perform further work absent the payment of the invoices, thereby preventing LQD from presenting an expert at the underlying bankruptcy trial. Accordingly, defendant contends that the breach of contract claims must be dismissed because JSH breached its obligations under the contract; the unjust enrichment claim fails because no benefit of an expert was conferred on LQD; and the open account and account stated claims fail because they invoices were sent to counsel rather than LQD itself.

Breach of Contract

“[T]o plead a cause of action for breach of contract, a plaintiff usually must allege that: (1) a contract exists; (2) plaintiff performed in accordance with the contract; (3) defendant breached its contractual obligations; and (4) defendant's breach resulted in damages” (34-06 73, *LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022] [internal citations omitted]). “The test to be applied is whether the complaint gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments” (*JP Morgan Chase v J.H. Elec. of New York, Inc.*, 69 AD3d 802, 803 [2d Dept 2010] [citations omitted]).

In this case, JSH has sufficiently plead its breach of contract causes of action. JSH states that a contract exists, and annexes a copy of the contract as exhibit A to the complaint (NYSCEF Doc. No. 2). JSH states that they performed work under the contract, billed the defendant's authorized agent, and was not paid pursuant to the contract. Therefore, giving the plaintiff every possible inference, the plaintiff has sufficiently plead that it performed in accordance with the contract and that the defendant breached its obligations to pay under the contract. Finally, plaintiff has alleged damages in the amount of \$209,064.70. Additionally, by annexing the invoices to the complaint, the plaintiff has set forth the items of its claim and the reasonable value therefore pursuant to CPLR § 3016(f). Accordingly, the plaintiff has sufficiently plead its breach of contract claims.

Account Stated

An account stated exists where a party to a contract receives bills or invoices and does not protest within a reasonable time (see *Russo v Heller*, 80 AD3d 531, 532 [1st

Dept 2011)). The defendant contends that the plaintiff has failed to sufficiently plead an account stated claim because the invoices were only sent to the defendant's attorney, and not the defendant itself. The complaint is sufficient, at the pleading stage, to survive a motion to dismiss. JSH was retained on LQD's behalf by LQD's attorneys, Graff Silverstein LLP. The complaint indicates that the invoices were sent to Graff Silverstein LLP, and that only the first of the three invoices was objected to. This is similar to the situation in *White Plains Cleaning Services, Inc. v 901 Properties, LLC* (94 AD3d 1108 [2d Dept 2012]), wherein the court stated that "It is irrelevant that the defendants themselves did not receive the invoices or statements" because a "principal is bound by notice to or knowledge of his or her agent in all matters within the scope of the agency, notwithstanding the fact that such information is never actually communicated to the principal." Furthermore, to the extent that the contract may be ambiguous¹, that ambiguity precludes a motion to dismiss for failure to state a cause of action (see *Onondaga County Indus. Dev. Agency by 39 Truck-Auto Plaza v Town of Van Buren*, 101 AD2d 702, 703 [4th Dept 1984]). Therefore, at least at this early stage of litigation, the plaintiff has plead its account stated claim in a manner sufficient to withstand a motion to dismiss

Open Account

The plaintiff's fourth cause of action for "open account" is plead as an alternative to the breach of contract causes of action "to the degree it is determined that no enforceable agreement is found to exist between the parties" (Complaint ¶ 38, NYSCEF Doc. No. 1). As this cause of action seeks identical relief based upon the same facts and circumstances as the breach of contract and/or unjust enrichment causes of action, it is dismissed (see *Alper v Seavey*, 9 AD3d 263, 266 [1st Dept 2004]).

Unjust Enrichment

"The essential inquiry in any action for unjust enrichment ... is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. A plaintiff must show that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [citations and quotations omitted]).

The unjust enrichment claim is sufficiently plead. Plaintiff alleges that LQD benefited at JSH's expense in that LQD used the expert advice, opinions, testimony, and reports rendered by JSH in the course of the adverse bankruptcy proceeding, that this was at JSH's expense in that it furnished expert consulting services to LQD thereby spending time in connection therewith that could have been spent on other paying clients, and that it would be against equity and good conscience to permit LQD to retain the benefit conferred without providing compensation. Thus, the plaintiff has sufficiently

¹ The engagement letter confirms that JSH was retained by Graff Silverstein LLP to consult on the project, and that "periodic invoices will be provided" without specifying who the invoices will be provided to. The portion of the agreement indicating that invoices would be sent to "CLIENT" appears in the "J.S. Held LLC Terms and Conditions" which is appended after the client signature line of the engagement letter.

plead all of the elements of unjust enrichment. Defendant’s contention that it did not receive a benefit from JSH’s work raises a question of fact but does not warrant dismissal of the cause of action for unjust enrichment.

Conclusion

For the reasons set forth hereinabove, it is hereby

ORDERED that the defendant’s motion to dismiss the complaint is granted as to the plaintiff’s fourth cause of action for open account; and it is further

ORDERED that the plaintiff’s fourth cause of action is dismissed; and it is further

ORDERED that the defendant’s motion to dismiss is otherwise denied; and it is further

ORDERED that the defendant answer the complaint within twenty (20) days of service of a copy of this order with notice of entry upon it

This constitutes the decision and order of the court.


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7/2/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE