

Stavrakis v Evenhar Dev. Corp.

2025 NY Slip Op 32535(U)

June 23, 2025

Supreme Court, New York County

Docket Number: Index No. 654748/2024

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04

Justice

-----X

JAMES STAVRAKIS,

Plaintiff,

- v -

EVENHAR DEVELOPMENT CORPORATION,

Defendant.

-----X

INDEX NO. 654748/2024

MOTION DATE 01/21/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion for JUDGMENT - SUMMARY.

Upon the foregoing documents, plaintiff’s motion for summary judgment is denied.

Plaintiff commenced this action on September 11, 2024, alleging that the parties entered into an Independent Consultant Agreement (the “Agreement”) in which plaintiff agreed to provide professional consultation services to defendant, that plaintiff provided these services and defendant has failed to pay the agreed-upon fee, and asserting claims for breach of contract, unjust enrichment, and account stated and seeking reasonable attorneys’ fees (NYSCEF Doc No. 1, complaint). Defendant answered and plaintiff now moves, prior to the commencement of discovery, for summary judgment.

In support of his motion, plaintiff submits a copy of the Agreement (NYSCEF Doc No. 9), a copy of an invoice dated September 26, 2022 (NYSCEF Doc No. 10), and an affidavit by plaintiff attesting to the veracity of the allegations in the complaint and that the invoice submitted was received and retained by defendant without objection (NYSCEF Doc No. 8, affidavit at ¶¶14-15).

In opposition, defendant argues that issues of fact preclude summary judgment and submits the affidavit of its President, Oren Evenhar, in which he attests that:

[A]fter Mr. Stavrakis started to perform his consulting services, we realized that he had misrepresented his abilities and he was unable to perform as advertised. As such, we terminated his services on or about July 15, 2022. Stavrakis agreed and attempted to sell one of our properties as an independent broker working for HKS Real Estate Advisors. Once he was unable to sell our properties, he went back and pursued this claim.

Right after he started, Mr. Stavrakis advised that his father had passed away. Mr. Stavrakis did not perform any work for the first two (2) weeks of the Agreement.

This Court must also take note that Plaintiff's own documents contradict his claims for monies due and owing as noted above, the Agreement was dated June 16, 2022. Contract can be found at NYSCEF No. 9.

However, Plaintiff's purported Invoice dated September 26, 2022 invoices for Consulting Services Weekly commencing on May 9, 2022 and ending on July 11, 2022. A copy of the Invoice can be found at NYSCED No. 10.

This is impossible, as Plaintiff has invoiced for some five (5) weeks before the Agreement was signed. By the Agreement's own start date, no monies were due before July 16, 2022.

Further, the Agreement called for Plaintiff to invoice per calendar week. See Agreement at Paragraph 2. Evenhar never received weekly invoices. Indeed, the only Invoice ever received was one dated September 26, 2022.

Upon receipt of the purported Invoice, your Deponent called Plaintiff and told him that the invoice was incorrect as it invoiced for some five (5) weeks prior to his actual start date; that he did not work many hours the first two (2) actual weeks due to the demise of his father; and that his work was not as represented.

Further, Defendant received no backup in connection with this invoice. I have no idea what work, if any, Plaintiff performed and how many hours said work took to perform. The models he sent were often incorrect and flawed showing his inexperience. We then agreed that he will just try to sell the property as an independent broker.

The amounts claimed in the invoice are overly exaggerated.

(NYSCEF Doc No. 21, Evenhar aff. at ¶¶6-12, 14-15).

DISCUSSION

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]).

Assuming, for the sake of argument, that plaintiff has carried his prima facie burden, defendant’s opposition has established triable issues of fact precluding summary judgment. To wit, given the parties’ sharp disputes as to plaintiff’s performance under the parties’ agreement, the accuracy of the invoice, and whether defendant disputed plaintiff’s invoice upon receipt, summary judgment is inappropriate (*see Frechtman v Gutterman*, 140 AD3d 538 [1st Dept 2016] [“Faced with conflicting affidavits, the billing statements, and email correspondence between the parties, the motion court properly denied summary judgment” on plaintiff’s account stated claim]; *P.S. Burnham, Inc. v Wertheimer*, 141 AD2d 431, 432 [1st Dept 1988] [defendant’s motion for summary judgment properly denied where “conflicting claims in the depositions and affidavits make it impossible to resolve central questions of fact as to the nature of the contract and whether it was substantially performed”]).

Accordingly, it is

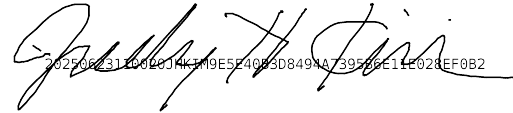
ORDERED that plaintiff’s motion for summary judgment is denied; and it is further

ORDERED that defendant shall, within twenty days of the date of this decision and order, serve a copy of same, with notice of entry, upon plaintiff as well as the Clerk of the Court; and it is further

ORDERED that such service upon the Clerk of the Court and 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 this court's website); and it is further

ORDERED that the parties are to appear for a preliminary conference in Part 4 (80 Centre Street, room 308) on September 11, 2025 at 9:30 am.

This constitutes the decision and order of the Court.



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6/23/2025

DATE

HON. JUDY H. KIM, 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