South Ocean Aviation, LLC v Pegasus Elite Aviation, Inc.
2025 NY Slip Op 33989(U)
October 16, 2025
Supreme Court, New York County
Docket Number: Index No. 655848/2024
Judge: Mary V. Rosado

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO **PART** 33M

Justice

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SOUTH OCEAN AVIATION, LLC, and STEVEN OLIVEIRA

Plaintiffs,

- v -

PEGASUS ELITE AVIATION, INC.,

Defendant.

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INDEX NO. 655848/2024

MOTION DATE 05/24/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48
were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and after a final submission date of June 25, 2025, Defendant Pegasus Elite Aviation, Inc.'s ("Defendant") motion to dismiss Plaintiffs South Ocean Aviation, LLC ("South Ocean") and Steven Oliveira ("Oliveira") (collectively "Plaintiffs") Amended Complaint is granted.

I. Background

Oliveira was the managing member of South Ocean, a now dissolved limited liability company. In March of 2014, South Ocean purchased a Gulfstream Aerospace model G-IV and two Rolls-Royce Deutschland Ltd & Co KG model Tay MK 611-8 aircraft engines (the "Aircraft") for $4,050,000.00. South Ocean intended to charter the Aircraft and engaged Defendant to assist with the purchase and to manage charter services post-purchase. The parties memorialized this agreement on March 1, 2014 (the "Contract") (NYSCEF Doc. 24). Pursuant to the Contract, South Ocean leased the Aircraft to Defendant and Defendant serviced and marketed the Aircraft. Defendant guaranteed (the "Guarantee") it would procure at least 150 hours of charter flights each calendar quarter, and to the extent it failed to do so (referred to as "Shortfall Hours"), would pay

or credit South Ocean amounts equal to the revenue that would have been generated but for the Shortfall Hours. Allegedly, by the end of 2018, Defendant had repeatedly defaulted on the Guarantee. Allegedly, Defendant claimed it did not have the resources to cover its obligations under the Guarantee and on December 14, 2018, South Ocean sold the Aircraft for a loss.

From 2018 through 2020, the parties allegedly engaged in negotiations to settle the amount owed under the Guarantee. On June 1, 2019, South Ocean allegedly attempted to terminate the agreement. South Ocean dissolved on December 31, 2019 (NYSCEF Doc. 31). Defendant via letter dated June 15, 2020, attempted to settle the amount owed (NYSCEF Doc. 25). Oliveira rejected this offer and tried to continue negotiating. Oliveira was eventually informed Defendant was sold to Prima Air Group LLC on October 10, 2022, and tried to continue negotiations with Prima. This action was commenced on November 4, 2024. Plaintiffs filed an Amended Complaint on April 29, 2025, alleging breach of contract, equitable estoppel, and promissory estoppel. In response, Defendant filed this motion to dismiss pursuant to the statute of limitations, which is granted.

II. Discussion

Defendant met its *prima facie* burden of showing the statute of limitations bars this action. The choice of law provision in the Contract states the Contract: "shall be governed by and construed in accordance with the laws of the state of New York, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof" (NYSCEF Doc. 46 at ¶ 7.1). The Court of Appeals has ruled that under a broad choice of law provision such as the one in the case at bar, CPLR 202 – also known as New York's borrowing statute – applies (*see 2138747 Ontario, Inc. v Samsung C & T Corporation*, 31 NY3d 372, 374-79 [2018]). The Court of Appeals has explained that CPLR 202 is "a stable fixture of New York's procedural law, of which [] sophisticated commercial entities were presumably aware when they chose New York's procedural

law to govern their arrangement" (*2138747 Ontario, supra* at 380). Because the choice of law provision does not state that New York's six-year statute of limitations governs, this Court is required to conduct a statute of limitations analysis under CPLR 202.

As provided by CPLR 202:

> "[a]n action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply."

Put another way: if a lawsuit is filed in New York, and a claim in the lawsuit accrued to a non-resident plaintiff while the plaintiff was outside of New York, then New York courts must compare the statute of limitations of the place where the claim accrued with New York's statute of limitations and apply whichever statute of limitations is shorter (*see Global Financial Corp. v Triarc Corp.*, 93 NY2d 525, 528 [1999]). Here, as alleged in the Amended Complaint, South Ocean and Defendant were always Nevada residents, including when Defendant breached the Contract by defaulting on its Guarantee in § 3.15(a). Because the parties are, or were, Nevada residents, and the alleged breach occurred outside of New York, CPLR 202 applies. Therefore, the Court must assess whether this action is timely pursuant to Nevada's statute of limitations.[1]

Pursuant to Section 86.505(1) of the Nevada Revised Statutes:

> "The dissolution of a limited-liability company does not impair any remedy or cause of action available to or against it or its managers or members commenced, within 2 years after the effective date of the articles of dissolution, with respect to any remedy or cause of action as to which the plaintiff learns, or in the exercise of reasonable diligence should have learned of, the underlying facts on or before the date of dissolution, or within 3 years after the date of dissolution with respect to any other remedy or cause of action. Any such remedy or cause of action not commenced within the applicable period is barred...."

[1] Plaintiffs mistakenly argue in opposition to application of the Nevada statute of limitations that Defendants invoked "the internal affairs doctrine" in its choice of law analysis, but this is incorrect. Defendants specifically invoke CPLR 202, which is the borrowing statute – and has nothing to do with the internal affairs doctrine.

South Ocean dissolved on December 31, 2019, at which time, pursuant to its allegations, it was aware of Defendant's breach. Plaintiffs allege:

> "By late 2018, out of the 20 full or prorated calendar quarters that had elapsed since the inception of the Agreement, PEA made good on the Guarantee in only eight of the quarters.... PEA was thus obligated to Pay SOA approximately $1,511,088.04.... To make matters worse, PEA did not have the resources to fund its obligation to SOA. It so informed SOA.... Even if SOA could have demanded immediate payment, since doing so might interfere with its business relationship with PEA, SOA chose to let the payable ride as a credit and put off collection. Ultimately, however, PEA made no cash payments under the Guarantee. PEA's guarantee proved to be vacuous, both because it could not perform its charter obligations as promised and because it could not fund its Guarantee...SOA decided to sell the aircraft. It did so on or about December 14, 2018...SOA suffered a loss of $2,450,000." (*see* NYSCEF Doc. 23 at ¶ 18-23).

Thus, pursuant to CPLR 202 and Section 86.505(1) of the Nevada Revised Statutes, Plaintiffs were required to bring this action by December 31, 2021. Plaintiffs concede Section 86.505(1) of the Nevada Revised Statutes provides a two-year window for dissolved limited liability companies to bring forth any claims known at the time of dissolution (*see* NYSCEF Doc. 38, Plaintiff's Br. in Opp. at p. 9). However, the action was not brought until November 4, 2024, well after the statute of limitations expired. Therefore, the burden shifts to Plaintiffs to raise an issue of fact as to the expiration of the statute of limitations. But Plaintiffs fail to do so.

Plaintiffs mistakenly rely on the doctrine of equitable estoppel to avoid the consequences of the statute of limitations. "Equitable estoppel is an extraordinary remedy, which applies where a party is prevented from filing an action within the applicable statute of limitation[s] due to his or her reasonable reliance on deception, fraud or misrepresentations by the other" (*MRE Technology Solutions LLC v Smiths Detection, Inc.*, 216 AD3d 430, 431 [1st Dept 2023] citing *Bacon v Nygard*, 140 AD3d 577, 578 [1st Dept 2016]).

To invoke this remedy, a plaintiff must show defendant engaged in affirmative misconduct which prevented plaintiff from complying with the statute of limitation (*MRE Technology, supra*,

citing *Zumpano v Quinn*, 6 NY3d 666 [2006]). Plaintiff must demonstrate reasonable reliance on some affirmative misrepresentation (*Zumpano, supra* at 674). Mere silence is insufficient to invoke equitable estoppel (*Ross v Louise Wise Services, Inc.*, 8 NY3d 478, 491 [2007]). Moreover, if a plaintiff is aware of the facts necessary to bring a claim before the statute of limitations has expired, equitable estoppel is inappropriate (*U.S. Education Loan Trust IV, LLC v Bank of New York Mellon*, 179 AD3d 447, 450 [1st Dept 2020] citing *Pahlad ex rel. Berger v Brustman*, 8 NY3d 901, 902 [2007]; *see also Putter v North Shore Univ. Hosp.*, 7 NY3d 548, 554-554 [2006]).

Here, Plaintiffs failed to meet their burden of alleging the requisite facts to invoke equitable estoppel. According to Plaintiffs' allegations, they were aware of Defendant's breach and Defendant's inability to cure its breach before South Ocean ever dissolved (*see* NYSCEF Doc. 23 at ¶ 18-23). They even purportedly terminated the Contract on June 1, 2019. There are no factual allegations that Defendant concealed from Plaintiffs certain facts or provided misrepresentations to Plaintiffs such that it was impossible for Plaintiffs to comply with the statute of limitations. In fact, Plaintiffs allege that they decided not to demand cash owed pursuant to the Guarantee "since doing so might interfere with its business relationship" with Defendant (NYSCEF Doc. 23 at ¶ 21). At a minimum, when Plaintiffs received Defendant's calculation of amounts owed on June 15, 2020, which as alleged by Plaintiffs "set forth a litany of false representations and calculations" any reasonable reliance on Defendant's alleged promise to cure its breach dissipated. This precludes application of equitable estoppel.[2]

In any event, "[i]t is well-settled law in New York that the mere fact that settlement negotiations have been ongoing between parties is insufficient to estop a party from asserting the Statute of Limitations as a defense" (*Dailey v Mazel Stores, Inc.*, 309 AD2d 661, 663 [1st Dept

[2] Plaintiffs' argument that Defendant was sold to a new owner post-default is unavailing, for the change in ownership had no impact on Plaintiffs' ability to sue Defendant within the statute of limitations.

2003]). Simply, Plaintiff failed to allege it was lulled into inaction when, according to its allegations, it knew in 2018 Defendant could not perform under the Contract, it attempted to terminate the contract in 2019, and it rejected Defendant's proposed settlement in June of 2020. Thus, Plaintiff failed to meet its burden in invoking equitable estoppel (*MBI Intern. Goldings Inc. v Barclays Bank PLC*, 151 AD3d 108, 117 [1st Dept 2017]; *Wiesel v 310 East 46 LLC*, 62 AD3d 516, 517 [1st Dept 2009]). Because there are no issues of fact precluding application of the statute of limitations, Plaintiffs' Complaint is dismissed.

To the extent Plaintiffs argue they maintain a valid promissory estoppel claim, this is without merit. The promissory estoppel claim is premised on promises made in the Contract. Based on the existence of the Contract, which neither side disputes, Plaintiffs' promissory estoppel claim is precluded (*Pope Contracting, Inc. v New York City Hous. Auth.*, 214 AD3d 519, 521 [1st Dept 2023] citing *ID Beauty S.A.S. v Coty Inc. Headquarters*, 164 AD3d 1186, 1886 [1st Dept 2018]).

Accordingly, it is hereby,

ORDERED that Defendant's motion to dismiss Plaintiffs' Amended Complaint is granted, and the Amended Complaint is hereby dismissed in its entirety; and it is further

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

10/16/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	x	CASE DISPOSED			☐	NON-FINAL DISPOSITION	
	x	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐ REFERENCE