5W Pub. Relations LLC v Missy Hair Boutique
2025 NY Slip Op 34720(U)
December 4, 2025
Supreme Court, New York County
Docket Number: Index No. 656085/2021
Judge: Verna L. Saunders

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART 36**
Justice

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5W PUBLIC RELATIONS LLC,
Plaintiff,

- v -

MISSY HAIR BOUTIQUE,
Defendants.

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INDEX NO. 656085/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31
Additional NYSCEF Document Numbers: 1, 13, 14, 15

were read on this motion to/for **SUMMARY JUDGMENT**.

In this case, which alleges that defendant owes plaintiff money under a public relations representation agreement (the, "Agreement"), defendant contends that plaintiff owes it a refund of the money it paid to plaintiff under the agreement, plaintiff currently seeks summary judgment and defendant opposes. For the reasons below, the court denies the motion.

Plaintiff 5W Public Relations LLC is a public relations firm, and defendant Missy McDaniels Lux Hair Boutique Inc.[1] is a hair boutique at 1 West 125th Street in Manhattan. Around May 7, 2021, the parties entered into the Agreement, pursuant to which defendant was to pay plaintiff $12,000.00 a month, plus specified expenses for at least six months (NYSCEF Doc. No. 23).[2] The Agreement further provided that the prevailing party in any legal dispute must pay attorney's fees and costs. Pursuant to the agreement, defendant initially paid plaintiff $24,000.00 for the first and last month's services. Plaintiff alleges that although it "substantially performed the terms of the agreement" (NYSCEF Doc. No. 1, ¶ 8),[3] defendant did not make any further payments. The complaint asserts causes of action based on breach of contract; unjust enrichment; quantum meruit; and account stated (*id.*, ¶¶ 6-20).

Defendant filed its answer to the complaint on February 8, 2022. In its answer, defendant denies plaintiff's claims (NYSCEF Doc. No. 13). Defendant notes that, in exchange for its $12,000.00 monthly fee, plaintiff agreed to provide the following services:

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[1] Defendant notes that the complaint incorrectly refers to it as "Missy Hair Boutique."
[2] The copy of the Agreement plaintiff filed does not include the addendum that contains its own services and obligations. As defendant filed the full document, the court cites to its submission.
[3] Plaintiff did not include the pleadings in its motion folder. Arguably, this gives the court sufficient reason to deny the motion (*see, e.g.*, *Barca v City of New York*, 13 Misc 3d 464, 465 [Sup Ct, Bronx County 2006]). However, in the exercise of discretion and the interest of judicial economy, the court opens the record "to ascertain procedural history" (*id.* at 468).

> . . . 5W will look to secure a consistent influx of coverage in key top-tier outlets and bloggers that position Missy Hair Boutique's hair offerings and new NY flagship as a leader in the wig and hair category. The specific target of media falling in the print, digital and broadcast mediums will receive tailored pitches with specific messages: • Beauty, Lifestyle & Fashion (Consumer) • Multicultural-Focused (Consumer) • Men's Interest (Consumer) • Entertainment & Celebrity (Consumer) • Business/Entrepreneurial • Beauty Trade/Industry News • Earned Bloggers (*id.*, ¶ 44 [Exhibit A to the Agreement]).

Plaintiff further stated that it would create coverage for the boutique, its services, and its stylists through coverage in various newspapers, such as The New York Times, Wall Street Journal, New York Post, New York Daily News, and others; in magazines such as Time Out New York and Manhattan Magazine, trade publications such as Women's Wear Daily; and from New York digital influencers and stylists (*id.*, ¶ 46).

According to the answer, "Plaintiff categorically failed to perform its obligations . . ." (*id.*, ¶ 47). In contrast to the complaint's contention that defendant accepted plaintiff's bills without objection, the counterclaims state that "at different times beginning on or around June 2021, Defendant formally notified Plaintiff of Defendant's dissatisfaction with Plaintiff's non-performance of the Agreement and reminded Plaintiff of its contractual obligations to provide results-driven services" (*id.*, ¶ 49). Defendant asserts that it objected to the invoices in a timely fashion and that, on June 16, 2021, it formally terminated the Agreement by a letter in which it also requested a refund of the $24,000.00 it had paid to plaintiff (*see* NYSCEF Doc. No. 24 [*June 11, 2021 Letter of Dissatisfaction*]; NYSCEF Doc. No. 25 [*February 2022 e-mail including copy of mailed June 16, 2021 letter of Termination*]). In its counterclaims, defendant alleges breach of contract with damages of $24,000.00, and it seeks attorney's fees and costs under the Agreement. In plaintiff's February 8, 2022, reply, it rejects defendant's allegations and asserts several affirmative defenses to the counterclaims (NYSCEF Doc. No. 14).

After plaintiff filed its reply to defendant's counterclaims, it apparently made no further efforts to prosecute the action. Therefore, on August 12, 2024, by certified mail and through NYSCEF, defendant served plaintiff with a 90-day notice (NYSCEF Doc. No. 15).[4] In response, plaintiff filed this motion for summary judgment on November 7, 2024.

In its opposition to the motion, defendant argues that the motion is premature, as no discovery conference has occurred, and no discovery has been exchanged. Defendant further notes that "for more than three years, [plaintiff] failed to take any action to prosecute the case" (NYSCEF Doc. No. 26, *11). Among other things, defendant states that depositions of the parties have not taken place. In reply, plaintiff contends that the motion is not premature, as it initiated the case in 2021 and defendant did not seek the outstanding discovery prior to this time.

[4] As the court indicated in footnote one, consideration of the 90-day notice is permissible because the court considered the full procedural record of the case. Additionally, although defendant did not include the 90-day notice in its opposition papers, defendant did refer to plaintiff's failure to litigate (*see* NYSCEF Doc. No. 26, *11).

Additionally, plaintiff states that defendant has not satisfied its burden of showing that discovery is outstanding as to specific critical issues. The court addresses this argument first.

Courts deny summary judgment as premature where there is outstanding discovery with respect to a critical issue (*see*, *e.g.*, *Philips RS N. Am., LLC v Savara, Inc*, 213 AD3d 506, 506 [1st Dept 2023]). In addition, where there are conflicting accounts about the parties' dispute, the non-moving party has the right to discovery as to the disputed issue or issues and summary judgment is premature (*see*, e.g., *Stewart v Prospect Transp. Inc.*, 238 AD3d 624, 624 [1st Dept 2025]). This is especially true where the moving party's "evidentiary support is taken from an individual who has not yet been deposed" and where the opposing party's statement contradicts the assertions in the individual's affirmation (*Pineda v 626 SMA Owner LLC*, 216 AD3d 475, 476 [1st Dept 2023]; *see Mediant Communications, Inc. v Spectrum Pharms., Inc.*, 238 AD3d 639, 641 [1st Dept 2025] [*Mediant*]). Further, courts do not require conclusive evidentiary support when it denies summary judgment, but properly deny the motion even where "[i]t [merely] is likely that needed proof may be within [the moving party's] exclusive knowledge" and the defendant's "claims may likely be supported by something other than mere hope and conjecture" (*Smith v Kixby Hotel*, 234 AD3d 459, 459 [1st Dept 2025]).

In the case at hand, the court concludes that, as defendant states, plaintiff's summary judgment motion is premature. The conflicting accounts of critical issues, such as 1) whether defendant orally complained to plaintiff about its purportedly shoddy publicity work, 2) whether defendant challenged the bills in a sufficient manner to negate plaintiff's account stated argument, 2) when the letter that cancelled the contract took effect, 3) whether plaintiff continued to provide publicity and other services to defendant after defendant sent the termination letter, as these facts are critical to plaintiff's quantum meruit and unjust enrichment claims, and 4) whether plaintiff's alleged poor performance excused defendant's obligation to pay any or all of the $24,000.00 it now seeks to recoup for the period during which plaintiff undisputedly performed some work, warrant denial of the motion. Although defendant did not list these matters in its argument that the motion is premature, its memorandum of law repeatedly stresses that there are triable issues with respect to plaintiff's alleged breach, whether defendant objected to plaintiff's invoices in a timely fashion (NYSCEF Doc. No. 26, *5-9). These issues, especially that of the conflicting statements of the parties' representatives, implicitly acknowledges that there is potentially useful and clarifying discovery that is outstanding (*see Pineda*, 216 AD3d at 476). This satisfies defendant's burden (*see Smith*, 234 AD3d at 459).

While plaintiff is correct that in certain circumstances courts consider such motions even where discovery is not complete (*see*, *e.g.*, *U.S. Bank N.A. v Mave Hotel Invs. LLC*, 231 AD3d 607, 608 [1st Dept 2024]), this only occurs where the non-moving party does not show "that discovery could have resulted in material facts that would enable them to prevail on their claims" (*id.*). In *354 Chauncey Realty, LLC v Brownstone Agency, Inc.* (213 AD3d 544, 545 [1st Dept 2023]), for example, the First Department reversed the trial court order that denied summary judgment because the plaintiff did not adequately state its claims and supported its argument with the attorney's affirmation "which asserted speculative arguments" rather than a statement by the party with personal knowledge. Here, however, defendant has provided the affirmation of its owner and president, and has supplemented its submissions with documents in support.

Further, defendant has disputed plaintiff's allegations and has pointed to specific issues of fact that would benefit from discovery.

Plaintiff's argument that the motion is not premature because defendant did not seek discovery earlier is unpersuasive in light of plaintiff's own conduct. Although in some circumstances, this argument is a viable one (*e.g.*, *Rodriguez v FGI Corp.*, 242 AD3d 431, 431 [1st Dept 2025]), the principle is not applicable here. As stated, after issue was joined, plaintiff did not prosecute the action at all. Indeed, it was defendant's service of the 90-day notice that started the active litigation of this lawsuit.

Even assuming, *arguendo*, this court were to reach the merits, it would deny the motion for summary judgment. For the reasons the court sets forth above, there are disputed issues of fact regarding several matters that preclude summary judgment on the contract. As defendant states, plaintiff's reliance on the impressions printout, the supplemental documents, and the affirmation of someone who has not been deposed and whose statements are disputed by defendant's owner are insufficient to satisfy plaintiff's *prima facie* burden on this cause of action.[5] Additionally, defendant's allegations that she orally and by e-mail objected to the bills is sufficient to defeat a summary judgment motion as to account stated (*see Mediant*, 238 AD3d at 641). As for plaintiff's causes of action for quantum meruit and unjust enrichment, the court notes that plaintiff only may assert such claims for the periods during which it actually performed work or conferred a benefit on defendant (*see Farina v Bastianich*, 116 AD3d 546, 547-548 [1st Dept 2014]). As such, issues of fact remain as to whether plaintiff can recover damages under these causes of action for the months after defendant e-mailed her termination notice. Upon the foregoing documents and for the reasons set forth in this decision, it is hereby

ORDERED that plaintiff's motion for summary judgment is denied, with leave to renew upon the completion of discovery; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendant shall serve a copy of this decision and order, with notice of entry, upon plaintiff; and it is further

ORDERED that the parties are hereby directed to appear for a remote preliminary conference on January 14, 2026, details which shall be provided by the court no later than January 12, 2026.

This constitutes the decision and order of this court.

December 4, 2025

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:							
		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER

[5] For the sake of judicial economy, the court considers the additional submissions plaintiff provided with its reply papers, which it could have submitted along with its original motion papers. These papers do not alter the court's conclusion.