F Enter. I, LLC v TSR Design Corp.
2026 NY Slip Op 30433(U)
January 29, 2026
Supreme Court, New York County
Docket Number: Index No. 655250/2018
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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F ENTERPRISE I, LLC., G BUILDERS, LLC,

Plaintiff,

- v -

TSR DESIGN CORP., SYLVIA FLORIAN, RICCARDO POGETTI

Defendant.

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INDEX NO. 655250/2018

MOTION DATE N/A[1]

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 112, 113, 114, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131

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

Defendants' motion for summary judgment dismissing this case is granted.

Background

Plaintiffs bring this case to recover rent payments and commissions from February 2009 through September 2018 based upon a February 2010 representation agreement and later license agreement. They contend that they worked with defendants to grow their business in America and let defendants use office space (and store items), but that defendants refused to pay plaintiffs what they are owed.

Defendants move for summary judgment on the ground that the February 2010 representation agreement expired in February 2011 and that it was never renewed. They also

[1] The Court recognizes that although this motion was fully briefed by late September 2023, the judge previously assigned to this case did not issue a decision. The undersigned was horrified to discover this motion was pending upon the transfer of this case in December 2025 and profusely apologizes, on behalf of the court system, for the delay.

contend that an alleged sublease never existed and that a June 2016 license agreement cited by plaintiff was a "joke" as it was signed by a minor.

Defendants explain that defendant Florian and her husband, defendant Pogetti, began their relationship with plaintiffs at the end of 2008/beginning of 2009. They contend these two defendants are Italian citizens who were trying to expand their business (TSR) to the United States. Eventually, defendants say that plaintiffs suggested that they act as TSR's representative in the U.S. and that plaintiffs were to earn commissions from any sales. Under the agreement, TSR was to pay plaintiff F Enterprise I LLC a five percent commission of the gross sales of products in the specific area. The agreement provided that the term was to be one year (NYSCEF Doc. No. 98, ¶ 10). And it "may be renewed for additional periods of one (1) year each . . . by the Representative by providing written notice of renewal to the Company not later than thirty (30) days prior to the expiration of the then current Term" (*id.*). Paragraph 17 detailed that all notices had to be "delivered personally or by facsimile transmission or mailed (certified mail, return receipt requested, postage prepaid) or sent by overnight delivery by a reputable overnight courier" (*id.* ¶ 17).

Defendants contend that plaintiffs offered TSR space at their offices to store materials, including wood samples. They insist they thought this offer did not require any payment as they were no invoices seeking any rent between 2010 and June 2016. Defendants claim that in June 2016, plaintiffs renegotiated the terms of their lease with their landlord and then asked TSR to sign a license agreement to appease the landlord. They point out that the individual defendants' 11-year-old son signed the document and all parties considered it a joke. Defendants admit that they paid the $1,600 monthly amount from August 2016 through September 2018 when they vacated the premises.

Defendants argue that plaintiffs' claims based on a breach of the representation agreement (the first through third) should be dismissed because that agreement expired in February 2011. They insist that the fourth, fifth and sixth claims premised on unpaid rent or storage fees are without merit because there was no valid contract. Defendants stress that even if there was some sort of oral agreement, it would be barred under the Statue of Frauds. They also claim that certain portions of plaintiffs' claims are barred by the statute of limitations and that the alter ego theories are not viable.

In opposition, plaintiffs contend that a party may ratify its agreement through conduct. They claim that defendants partially performed under the terms of the agreement and cites to examples in various communications in which defendants mentioned commissions. Plaintiffs also contend a memo was drafted in 2011 that referenced the continuation of the representation agreement.

With respect to the office space, plaintiffs argue that there is a license agreement for August 2016 through August 2017 and that there is an issue of fact for the term of February 2009 through August 2016. They insist that the Statute of Frauds does not bar any of their causes of action.

In reply, defendants point out that during much of the period after the contract expired, plaintiffs' principal was in prison or on probation for construction fraud charges. They assert that plaintiff appears to suggest that the representation agreement was extended indefinitely and that defendants are obligated to pay of $140,000 in unpaid rent over seven years despite the only purported agreement being signed in 2016 (an agreement signed by a minor child).

Discussion

"On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party. Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact and then only if, upon the moving party's meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action" (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503, 942 NYS2d 13 [2012] [internal quotations and citations omitted]).

The Court's analysis begins with plaintiff's first three causes of action all of which relate to the representation agreement. There is no dispute that there was a signed representation agreement, as noted above, signed by plaintiff FE and defendant TSR in February 2009 (NYSCEF Doc. No. 98). As the Court previously detailed, the agreement contained a renewal provision in which plaintiffs could seek renewal by "providing written notice" to defendant TSR (*id*. ¶ 10). On this record, there is no indication that plaintiffs ever sent any written notice to renew as required under the agreement. Therefore, the Court finds that defendants met their burden to show that the agreement was not extended past the first year.

And the Court finds that plaintiffs failed to raise an issue of fact in opposition. Plaintiffs' first contention is that a memo created in June 2011 that states that the representation agreement would "remain as written, as per George and Silvia, this agreement can only be terminated in writing" (NYSCEF Doc. No. 122). This document does not create an issue of fact. It is unclear who drafted it- the affirmation and the memorandum of law only state the memo "was created." And plaintiffs do not contend that defendants ever signed this memorandum. Importantly, the representation agreement itself contains a merger clause stating that it constituted the entire

agreement (*id*. ¶ 18). And this memorandum states it was sent "via email" but that email was not attached to plaintiffs' submission.

The Court is simply unable to find that a vague memorandum dated well after the original expiration date of the agreement somehow extended that agreement indefinitely to cover the time period at issue here—which runs at least another seven years. The fact is that the parties signed a sophisticated agreement that contained not only a precise renewal term but also detailed a specific way in which the notice of that renewal should be sent. There is no evidence at all that they followed the required method for renewal once, much less for years and years.

Plaintiffs also pointed to emails in which they claim that Ms. Florian detailed working with plaintiffs' principal in 2017 and a reference to a commission in 2018. The problem, as noted above, is that none of these communications "unequivocally" demonstrate that the parties had agreed to renew the representation agreement (*see Carlin v Jemal*, 68 AD3d 655, 656 [1st Dept 2009] [observing that defendants conduct did not unequivocally refer to the alleged oral modifications]). Here, there is not a single email that specifically references the representation agreement or any suggestion that it was renewed again and again over the years.

Moreover, as defendants point out, at least one email exchange in July 2018 suggests that there were negotiations concerning commissions (NYSCEF Doc. No. 124), which raises the possibility that the parties were simply working together pursuant to some other set of terms. Although the parties maintained a relationship through the years, there is no indication that they operated under the terms of the representation agreement.

Plaintiffs' fourth through sixth claims are also without merit and dismissed. Here, plaintiffs contend that there was a sublease and that defendants failed to pay the rent from

February 2009 through September 2018 (NYSCEF Doc. No. 91 at 5-7). These claims fail for several reasons. It is axiomatic that an alleged oral agreement from February 2009 through July 2016 for office space is barred by the statute of frauds (General Obligations Law § 5-701). Plaintiffs did not cite an adequate justification for how it could seek unpaid rent for so many years where it is undisputed that there was no written agreement for that space.

The Court also finds that the purported signed license agreement from June 2016 is a nullity because it was signed by a minor (NYSCEF Doc. No. 119 at 8). Plaintiff simply failed to adequately explain how this Court could find that defendants are bound, and the Statute of Frauds is satisfied, by pointing to an agreement signed by a child. While this Court has no idea whether this was a "joke" or not, the point is that it does not constitute a valid agreement that binds defendant TSR. That defendants paid some amount of rent over the years is not a basis to find that they were somehow bound prior to the date of this purported license agreement nor does it remedy the fact that the Statute of Frauds requires a writing for a lease. Plus, defendants showed they paid $1,600 from October 2016 to September 2018 (NYSCEF Doc. No. 103).

And, critically, plaintiffs did not explain how they were entitled to recover for claims prior to 2012 based on the applicable statute of limitations. Their assertion that there was an acknowledgement of a debt by defendants is not supported in this record. So even if there was some sort of viable claim, the statute of limitations would bar claims accruing prior to October 23, 2012.

Finally, the Court observes that even if there were viable claims against the corporate defendant TSR, plaintiffs did not meet their burden to raise an issue of fact concerning a veil piercing theory of liability as to the individual defendants. The subject representation agreement

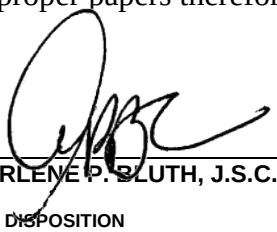
and the license agreement are with the corporate defendant TSR only. There is no basis to find the individual defendants liable for the purported liability of the corporate defendant.

Summary

The Court recognizes that it seems plaintiffs and defendants continued to work together, in some capacity, through 2018. But the question on this motion is whether plaintiffs raised an issue of fact concerning the representation agreement and the license agreement and the Court finds that they have not. There is no indication on this record that the parties ever renewed the agreement or that defendants agreed to a renewal under a theory of ratification. Moreover, the license agreement simply is not valid as there is no valid signature.

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment is granted, the case is dismissed, and the Clerk is directed to enter judgment in favor of defendants and against plaintiffs along with costs and disbursements upon presentation of proper papers therefor.



1/29/2026
DATE

ARLENE P. BLUTH, 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