Pinnacle Sports Media & Entertainment, Inc. v Greene
2015 NY Slip Op 31386(U)
July 14, 2015
Supreme Court, New York County
Docket Number: 650046/15
Judge: Nancy M. Bannon

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - PART 42

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PINNACLE SPORTS MEDIA & ENTERTAINMENT, INC., f/k/a PINNACLE SPORTS MEDIA & ENTERTAINMENT, LLC,

Plaintiff

DECISION AND ORDER

-against-

INDEX NO.: 650046/15

LESLIE KAI GREENE, a/k/a KAI L. GREENE and ADAM PAZ

Defendants

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NANCY M. BANNON, J.

This action for, inter alia, breach of contract, arises out of two purported contracts, one between plaintiff Pinnacle, a sports and entertainment management company, and defendant Greene, a top-ranked professional bodybuilder, for sports management services and the other between Pinnacle and defendant Paz for Paz's employment as Greene's manager. When Paz and Greene terminated their professional relationships with Pinnacle, Pinnacle moved pursuant to CPLR 6301 for preliminary injunctive relief enjoining Paz from providing business management and related services to Greene, based on a provision from the purported employment contract between Pinnacle and Paz. The motion is denied.

I. Background

The President of Pinnacle, Peter Anske, and Paz became acquainted in 2013 at a gym they both attended. Paz told Anske that he worked with Greene, who was the number two ranked bodybuilder in the world at that time. In November 2013, Anske told Paz that he would be interested in bringing Paz and Greene to work with his company, Pinnacle, and began discussing Paz's potential employment with Pinnacle. In January 2014, Greene signed a Business Management Agreement with Pinnacle after he obtained a life insurance policy at Anske's request. Per Ankse's instruction, Paz remained with his previous employer and commenced employment with Pinnacle in June 2014 without a formalized employment

agreement. In August 2014, Anske provided an offer letter to Paz, which stated: "This offer is contingent upon the execution of an Employment Agreement to be generated upon your acceptance of this Offer Letter" and specified some of the terms that would be included in a future Employment Agreement. In December 2014, Greene terminated his Business Management Agreement and Paz left employment with Pinnacle. Paz continues to act as manager for Greene.

In January 2015, Pinnacle commenced this action against Greene and Paz, asserting causes of action against Paz for breach of contract, unjust enrichment, tortious interference with contract, interference with business relations, and breach of duty of loyalty. Pinnacle asserted causes of action against Greene for breach of contract and anticipatory repudiation of contract. Pinnacle now moves for a preliminary injunction enjoining Paz from providing management and related services to Greene.

II. Discussion

A party is entitled to a preliminary injunction upon a showing by clear and convincing evidence of (1) likelihood of success on the merits, (2) irreparable injury absent the granting of preliminary injunctive relief, and (3) a balancing of the equities in the movant's favor. See Nobu Next Door, LLC v Fine Arts Housing, Inc., 4 NY3d 839 (2005); Gilliland v Acquafredda Enterprises, LLC, 92 AD3d 19 (1st Dept. 2011); Coinmach Corp. v Alley Pond Owners Corp., 25 AD3d 642 (2nd Dept. 2006). A preliminary injunction should only be granted in extraordinary situations and should maintain the status quo. St. Paul Fire and Marine Ins. Co. v York Claims Services, Inc., 308 AD2d 347 (1st Dept. 2003). Here, Pinnacle has failed to make the requisite showing for a preliminary injunction.

A. Likelihood of Success on the Merits

In order to establish a likelihood of success on the merits of a cause of action for breach of contract, the plaintiff must show: 1) formation of a contract between the plaintiff and defendant, 2) performance by the plaintiff, 3) the defendant's failure to perform, and 4) resulting damage. Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010). To create a binding contract, there must be a meeting of the minds regarding the material terms of the agreement in that "there must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms." Metropolitan Enterp. N.Y. v Khan Enterp. Constr., Inc., 124 AD3d 609 (2nd Dept. 2015).

Here, Pinnacle has failed to show a likelihood of success on the merits on its fifth cause of action for breach of contract against Paz. Although Pinnacle contends that Paz had an employment contract with Pinnacle which prohibited him from working with any of Pinnacle's clients for two years following his employment at Pinnacle, Pinnacle fails to submit evidence indicating the existence of a valid contract between Pinnacle and Paz. Pinnacle submitted an Offer Letter from Pinnacle to Paz, dated August 7, 2014, which states, "This offer is contingent upon an execution of an Employment Agreement to be generated upon your acceptance of this Offer Letter." Although the Offer Letter specified some of the terms that would be included in a future Employment Agreement, Pinnacle fails to submit evidence that any Employment Agreement was ever signed by Pinnacle and Paz. Accordingly, as the terms to be included in the Employment Agreement were left open for future negotiations, the Offer Letter indicates nothing more than an indefinite and unenforceable "agreement to agree" and is insufficient to show a meeting of the minds on all material terms necessary to establish the existence of a valid contract. See Galesi v Galesi, 37 AD3d 249 (1st Dept. 2007); see also Coby Group, LLC v Hasenfeld, 46 AD3d 593 (2nd Dept. 2007); cf. Kausal v Educational Products Information Exchange Institute, 105 AD3d 909 (2nd Dept. 2013).

With regard to its third cause of action against Paz for tortious interference with a contract, Pinnacle claims that Paz persuaded Greene to breach his contract with Pinnacle so that Paz could work with Greene on his own. In support of this contention, Pinnacle submits a Business Management Agreement purportedly signed by Greene on January 10, 2014. However, Greene denies signing the version attached to Pinnacle's motion and submits a different version of the Business Management Agreement signed by Greene on January 10, 2014. These two disparate versions of the Business Management Agreement with different terms fail to evidence the mutual assent necessary to establish the existence of a valid contract between Pinnacle and Greene. See Metropolitan Enterp. N.Y. v Khan Enterp. Constr., Inc., supra. Furthermore, Pinnacle fails to provide any evidence that Paz intentionally procured Greene's breach of any contract between Pinnacle and Greene without justification. See Beecher v Feldstein, 8 AD3d 597 (2nd Dept. 2004). Pinnacle, therefore, fails to demonstrate a likelihood of success on the merits its third cause of action against Paz for tortious interference with a contract.

Similarly, Pinnacle fails to show a likelihood of success on the merits of its fourth cause of action for tortious interference with business relations, as Pinnacle fails to submit evidence indicating that Paz's conduct in departing employment with Pinnacle and continuing representation of Greene was accomplished by wrongful means or done solely for the purpose of harming Pinnacle. See Moulton Paving, LLC v Town of Poughkeepsie, 98 AD3d 1009 (2nd Dept. 2012).

Pinnacle also fails to demonstrate a likelihood of success on the merits on its sixth cause of action for breach of duty of loyalty. Although Paz owed a duty of good faith and loyalty to Pinnacle in the performance of his duties (see Island Sports Physical Therapy v. Burns, 84 AD3d 878 [2nd Dept. 2011]), Pinnacle did not submit any evidence indicating that Paz made improper use of Pinnacle's time, facilities, or proprietary secrets in ending his employment with Pinnacle and continuing to provide management services to Greene. See Feiger v Iral Jewelry, Ltd., 41 NY2d 928 (1977); Island Sports Physical Therapy v. Burns, supra.

Pinnacle's seventh cause of action for unjust enrichment is based on the same conduct and purported agreement as its breach of contract claim and is, thus duplicative. Bettan v Geico General Ins. Co., 296 AD2d 469 (2nd Dept. 2002). In any event, Pinnacle fails to submit evidence indicating that Paz was enriched at Pinnacle's expense and that it would be "against equity and good conscience" to permit Paz to continue providing sports management services to Greene. Mandarin Trading Ltd. v. Wildenstein, 16 NY3d 173, 182 (2011). Indeed, Pinnacle does not submit evidence of a valid contract or allege any other facts indicating that it relied on a prohibition from Paz working with any of Pinnacle's clients for any amount of time following his employment at Pinnacle. See Id. Accordingly, Pinnacle fails to demonstrate a likelihood of success on the merits for any of its causes of action against Paz.

B. Irreparable Injury

Pinnacle seeks to enjoin Paz from continuing to provide sports management services to Greene. However, Greene terminated his relationship with Pinnacle. Although Pinnacle established that Greene is an irreplaceable asset to its business, any harm suffered by Greene leaving Pinnacle will not be remedied by preventing Paz from managing Greene, as Greene no longer has a sports management relationship with Pinnacle. In addition, Pinnacle seeks money damages for his claims against Paz. Where, as here, money damages are sufficient to compensate the plaintiff, irreparable injury has not been shown. See Difabio v. Omnipoint Communications, Inc., 66 AD3d 635 (2nd Dept. 2009). Therefore, Pinnacle fails to demonstrate irreparable injury in the absence of injunctive relief.

C. Balancing of the Equities

Pinnacle also fails to demonstrate the balancing of equities in its favor in that it did not show that the harm that would be sustained by Pinnacle if the injunction is not granted far outweighs the harm that would be caused to Paz if the injunction were to be granted. McLaughlin, Piven, Vogel, Inc. v W.J. Nolan and Co., 114 AD2d 165 (2nd Dept. 1986). If the preliminary injunction is not granted, Paz will continue to work with Greene. However, granting

the preliminary injunction will not restore the sports management relationship between Pinnacle and Greene because Greene terminated the relationship. Granting the injunctive relief sought by Pinnacle would cause Paz to lose his business relationship with Greene, which began at least three years before Paz joined Pinnacle. Accordingly, if Paz were not permitted to continue managing Greene, the harm suffered by Paz is greater than any harm suffered by Pinnacle if Paz continues to work with Greene. Therefore, Pinnacle failed to show the balancing of equities in its favor.

III. Conclusion

Because Pinnacle fails to show a likelihood of success on the merits, irreparable harm, and the balancing of the equities in its favor, the motion for a preliminary injunction enjoining Paz from providing managerial services to Greene is denied.

Accordingly, it is

ORDERED that the plaintiff's motion for a preliminary injunction is denied, and it is further,

ORDERED that the parties shall appear for a preliminary conference on October 8, 2015, at 9:30 a.m.

This constitutes the Decision and Order of the court.

Dated: July 14, 2015

JSC

HON. NANCY M. BANNON