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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DIETER HUCKESTEIN,)	Case No. CV 10-04228 DDP (PJWx)
)	
Plaintiff,)	ORDER DENYING MOTION TO DISMISS
)	
v.)	[Motion filed on November 3,
)	2010]
TIMOTHY L. BLIXSETH and)	
BLIXSETH GROUP OF WASHINGTON)	
LLC, limited liability)	
company,)	
)	
Defendants.)	
_____)	

Presently before the Court is Timothy Blixseth and Blixseth Group of Washington, LLC's (collectively "Defendants") Motion to Dismiss. Defendants motion is opposed by Plaintiff Dieter Huckstein ("Huckstein"). After reviewing the parties' moving papers, considering the arguments therein, and hearing oral argument, the court DENIES the motion.

I. BACKGROUND

On or about December 21, 2005, Huckstein and World Cup LLC entered into an employment agreement ("Employment Agreement") in which Huckstein became the President and Chief Executive Officer of World Cup LLC. (First Amended Complaint "FAC" ¶ 7.) Pursuant to

1 the terms of the Employment Agreement, Huckstein was to be employed
2 in such capacity for a five-year term starting February 15, 2006.
3 (Id. ¶ 8.) Important for purposes of this lawsuit, the Employment
4 Agreement included certain pledges of property and indemnity and
5 also contained provisions in the case of termination.

6 Section 8.2 of the Employment Agreement provided that "[a]s
7 compensation for entering into this Agreement, [World Club] agrees
8 to cause a Lot within the Yellowstone Mountain Club Subdivision,
9 Big Sky, Montana, to be conveyed to Huckstein." (Id. ¶ 10.)

10 Section 15.1 of the Employment Agreement provided that
11 Huckstein may terminate the agreement for any reason upon ninety
12 days notice and receive no further compensation following the
13 ninety day period. (Id. ¶ 11.)

14 Section 15.2 of the Employment Agreement provided that World
15 Club may terminate the agreement "for any reason upon written
16 notice to Huckstein and the payment to Huckstein of the Base
17 Compensation owing [sic] under the remaining terms of this
18 Agreement, or thirty (30) months worth of Base Compensation
19 payments, whichever is less." (Id. ¶ 12.)

20 Section 15.3 of the Employment Agreement provided that
21 Huckstein may also elect to terminate the Agreement upon ninety
22 days written notice and be compensated as set forth in Paragraph
23 15.2if any of the following conditions or events occur:

24 (1) Timothy L. Blixseth no longer Manager of World Club or
25 Yellowstone Mountain Club, LLC,(2) Timothy L. Blixseth no longer
26 controls at least fifty percent (%50) of World Club or Yellowstone
27 Mountain Club, LLC, or (3) World Club is in material breach of the

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1 Agreement and has failed to cure the breach within a reasonable
2 time of written notice. (Id. ¶ 13.)

3 Section 17 of the Employment Agreement set out an indemnity
4 agreement that stated that World Club would "indemnify Huckestein
5 in his capacity as an employee and agent of [World Club], and hold
6 [Huckestein] harmless from any and all cost, expense or liability,
7 of any nature, arising out of or relating to any acts, omissions or
8 decisions made by him on behalf or in the course of performing
9 services for [World Club]" (Id. ¶ 14.) Section 17 also
10 stated that Huckestein would be "named insured under all liability
11 insurance policies now in force or hereafter obtained covering any
12 officer or director of [World Club] in his capacity as an officer
13 or director." (Id.)

14 Section 19 of the Employment Agreement states that Huckestein
15 and World Club agree to mediate any dispute under the Agreement.
16 Section 22 states that the Employment Agreement is to be governed
17 by the laws of the state of Washington. (Id. ¶¶ 15-16.)

18 On February 16, 2006, Blixseth and Huckestein entered into an
19 operating agreement for Yellowstone Club World, LLC ("YCW"). (Id.
20 ¶ 17.) Blixseth became a member of YCW, with a ninety percent
21 ownership interest, and Huckestein became a member of YCW with a
22 ten percent ownership interest. (Id. ¶¶ 17-18.) In September,
23 World Club and Huckestein entered into a First Amendment to the
24 Employment Agreement, whereby YCW was substituted as a party in
25 place of World Club. (Id. ¶ 22.)

26 In late 2006, Blixseth and his wife filed for dissolution of
27 their marriage in Superior Court in California, and in June 2008
28 the couple executed a Marital Settlement Agreement ("MSA") whereby

1 Blixseth's ninety percent interest in YCW was transferred, or would
2 soon be transferred, to his wife. (Id. ¶ 24.) The MSA also
3 terminated Blixseth's management of YCW and stated that:

4 [Blixseth] will assume responsibility for the
5 employees of YCW and relieve [Edra Blixseth] of
6 future obligations with regard thereto, other than
7 the obligation to provide Dieter Huckestein with
8 either a lot at the Yellowstone Club or the payment
9 he is due in lieu thereof.

10 (Id. ¶ 26.) In July 2008, Huckestein notified Blixseth of
11 his resignation, and he specifically invoked Section 15.3 of
12 the Employment Agreement in so doing. (Id. ¶¶ 28-29.) In
13 September 2008, Blixseth Group (or "BGW") assumed all of the
14 obligations Blixseth owed to the YCW employees and
15 Huckestein. (Id. ¶ 33.)

16 In March 2009, Edra Blixseth filed a petition for
17 bankruptcy under Chapter 11, and a Bankruptcy Court appointed
18 a Trustee for the YCW bankrupt estate. (Id. ¶¶ 41-42.) In
19 November 2009, Huckestein filed a proof of claim against YCW,
20 seeking 4.2 million for the unpaid Base Compensation and Lot
21 under the Employment Agreement. In turn, the Trustee of the
22 YCW estate asserted claims against Huckestein. Ultimately,
23 Huckestein and YCW settled and reached a mutual agreement
24 that was approved by the bankruptcy court. (Id. ¶¶ 44-47.)
25 That settlement included costs that were charged to
26 Huckestein for acts he performed while employed by YCW. (Id.
27 ¶ 48.)

28 Now, Huckestein brings suit against Blixseth and BGW.
Huckestein alleges five causes of action. The first four
claims are based on the Employment Agreement and are

1 contractual. The fifth and final claim is against Blixseth
2 alone as the alter ego of YCW. (Id.)

3 **II. LEGAL STANDARD**

4 **A. Rule 12(b)(6)**

5 Rule 8 of the Federal Rules of Civil Procedure "requires
6 more than labels and conclusions, and a formulaic recitation
7 of the elements of a cause of action will not do . . .
8 Factual allegations must be enough to raise a right to relief
9 above the speculative level." Bell Atlantic Corp. v.
10 Twombly, 550 U.S. 544, 555 (2007). When considering a
11 12(b)(6) motion to dismiss for failure to state a claim, "all
12 allegations of material fact are accepted as true and should
13 be construed in the light most favorable to the plaintiff."
14 Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000).

15 A court need not accept as true conclusory allegations
16 or allegations stating a legal conclusion. In re Stac Elecs.
17 Sec. Litig., 89 F.3d 1399, 1403 (9th Cir. 1996); Iqbal v.
18 Ashcroft, 129 S.Ct. 1937, 1940-41 (2009) ("mere conclusions[]
19 are not entitled to the assumption of truth."). A court
20 properly dismisses a complaint on a Rule 12(b)(6) motion
21 based upon the "lack of a cognizable legal theory" or "the
22 absence of sufficient facts alleged under the cognizable
23 legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d
24 696, 699 (9th Cir. 1990). The plaintiffs must allege
25 "plausible grounds to infer" that their claims rise "above
26 the speculative level." Bell Atlantic Corp. v. Twombly, 550
27 U.S. 544, 127 S. Ct. 1955, 1965 (2007). That is, the
28 plaintiffs' obligation requires more than "labels and

1 conclusions" or a "formulaic recitation of the elements of a
2 cause of action." Id. at 1964-65.

3 "Generally, a district court may not consider any
4 material beyond the pleadings in ruling on a Rule 12(b)(6)
5 motion." Hal Roach Studios, Inc. v. Richard Feiner & Co.,
6 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). "However, material
7 which is properly submitted as part of the complaint may be
8 considered." Id.

9 **III. DISCUSSION**

10 Defendants seek to dismiss Huckestein's contractual
11 claims on the grounds that (1) Defendants are not parties to
12 the Employment Agreement; (2) Huckestein is barred from
13 raising them by res judicata; and (3) Huckestein's alter ego
14 claim is the property of the bankruptcy trustee. In
15 response, Huckestein counters (1) that Defendants expressly
16 assumed the obligations in the Employment Agreement, and are
17 therefore the proper party for enforcement of that agreement;
18 (2) res judicata does not apply because the earlier
19 settlement involved different parties; and (3) his alter ego
20 claim is not the property of the bankruptcy estate. (Pl's
21 Opp'n 2:21-27-3:1-5.)

22 In support of their various arguments, both parties rely
23 on extrinsic evidence that goes beyond the pleadings. In
24 general, a court does not look beyond the pleadings when
25 considering a motion to dismiss. Lee v. City of Los Angeles,
26 250 F.3d 668, 690 (9th Cir. 2001) (holding that the district
27 court erred in granting a motion to dismiss by relying on
28 extrinsic evidence and by taking judicial notice of disputed

1 matters of fact in support of its ruling). A court may take
2 judicial notice of "matters of public record" without
3 converting a motion to dismiss into a motion for summary
4 judgment. MGIC Indem. Corp. v. Weisman, 803 F.2d 500, 504
5 (9th Cir. 1986). But a court may not take judicial notice of
6 a fact that is "subject to reasonable dispute." Fed. R.
7 Evid. 201(b). Here, resolution of Defendants' motion to
8 dismiss would require the court to resolve facts that are
9 subject to reasonable dispute, and Plaintiff has alleged
10 "plausible grounds to infer" that his claims rise "above the
11 speculative level." Therefore, the court concludes that
12 dismissal of Plaintiff's complaint is not appropriate.

13 **IV. CONCLUSION**

14 For the foregoing reasons, the court DENIES Defendants'
15 Motion to Dismiss.

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19 IT IS SO ORDERED.

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22 Dated: January 19, 2011


DEAN D. PREGERSON
United States District Judge

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