

SS&C Tech., Inc. v GGR Servicing Asset Mgt., LLC

2013 NY Slip Op 32161(U)

September 10, 2013

Supreme Court, New York County

Docket Number: 653151/12

Judge: Anil Singh

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

PRESENT: _____
Justice

PART 61

Index Number : 653151/2012
SS&C TECHNOLOGIES, INC.
vs
GGR SERVICING ASSET
Sequence Number : 001
DISAMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed memorandum opinion.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 9/10/13

REC 7

HON. ANIL C. SINGH
SUPREME COURT JUSTICE, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
SS&C TECHNOLOGIES, INC.,

Plaintiff,

-against-

GGR SERVICING ASSET MANAGEMENT, LLC,
formerly d/b/a ZAIS SERVICING ASSET
MANAGEMENT, LLC, d/b/a SERVICING
ASSET MANAGEMENT, LLC

Defendant.
-----X

DECISION AND
ORDER

Index No.
653151/12

HON. ANIL C. SINGH, J.:

Defendant moves to dismiss three causes of action in the complaint pursuant to CPLR 3211(a)(1), based upon the express terms of a written agreement, an addendum and assignment of the agreement, and a termination letter. Plaintiff opposes the motion.

Plaintiff SS&C Technologies, Inc., entered into a written agreement (the "Master Agreement") with Zais Group, LLC ("Zais"), dated March 30, 2010. The agreement stated that plaintiff was to provide software and computer-related support services to Zais for a term of one year, which would be renewed automatically unless cancelled pursuant to the terms of the Master Agreement.

Plaintiff and Zais executed a written Consent to Assignment and Addendum to Master Agreement in April 2011, that modified, extended and renewed the Master Agreement for a term of one year, beginning March 30, 2011, and ending on March 30, 2012. The document assigned the Master Lease from Zais to defendant, GGR Servicing Asset Management, LLC.

Plaintiff commenced the instant action by filing a summons and verified complaint on September 10, 2012. The complaint alleges that in October 2011, defendant defaulted in making payments for the services. The complaint alleges further that defendant attempted to terminate the Master Agreement by sending a letter to plaintiff dated September 29, 2011; however, pursuant to the express terms of the Master Agreement and addendum, the Master Agreement could not be terminated until March 29, 2012.

The complaint asserts four causes of action. The first cause of action alleges breach of contract. The second alleges an account stated. The third alleges unjust enrichment. The fourth alleges that defendant failed to pay for work, labor and services delivered. Plaintiff seeks damages in the amount of \$49,220.

Discussion

Defendant's first contention is that the account stated claim should be

dismissed because defendant's formal termination of the Master Agreement obviated the need to continually object to plaintiff's post-termination invoices.

An account stated is an agreement between parties to an account based upon prior transactions between them with respect to the correctness of the account items and balance due (1 N.Y.Jur.2d Accounts and Accounting section 18). An agreement may be implied where a defendant retains bills without objecting to them within a reasonable period of time or makes partial payment on the account (Id.). Accordingly, a defendant's receipt and retention of a plaintiff's invoices without objection within a reasonable period of time gives rise to an actionable account stated (Goldmuntz v. Schneider, 99 A.D.3d 544, 545 [1st Dept., 2012];).

The complaint in the instant matter alleges that: 1) plaintiff rendered statements of account on a regular basis; 2) defendant retained such statements without dispute; 3) plaintiff has stated an account in the amount of \$49,220; and 4) defendant refused to pay the sum despite demand.

After careful consideration, we find that the facts alleged are sufficient to state a cause of action for an account stated. Defendant's contention that it was unnecessary to continually object to post-termination invoices in light of the agreement's termination is a defense that goes to the merits.

Defendant's second contention is that plaintiff's unjust enrichment claim

and quasi-contract claim for work, labor and services should be dismissed because defendant cancelled the Master Agreement and never benefitted from any services provided thereafter.

“A quasi-contractual cause of action may not be duplicative of a breach of contract cause of action” (22A N.Y.Jur.2d Contracts section 571).

In short, the Court finds that the causes of action for unjust enrichment and for work, labor and services are duplicative of the breach of contract claim.

Defendant’s final contention is that plaintiff’s breach of contract claim should be dismissed because it is barred by the express terms of the Master Agreement and the addendum.

Section 3.5 of the Master Agreement states in pertinent part that

the Maintenance Program term shall be renewed automatically on an annual basis ... unless terminated by either party by prior written notice of at least thirty (30) days prior to the expiration of the initial term or any renewal term.

(Affirmation in Opposition, exhibit A, Master Agreement, p. 3, para. 3.5).

The complaint, which is verified by Richard Collyer, Vice-President of the corporate plaintiff, alleges specifically that defendant defaulted on the Master Agreement and addendum by: 1) failing to pay for services rendered; and b) sending notice of termination despite language in the agreement stating that the

agreement renewed automatically for an additional one-year term.

Viewing the allegations in the light most favorable to plaintiff, it is clear to the Court that the verified complaint states a valid cause of action for breach of contract.

Accordingly, it is

ORDERED that the motion to dismiss is granted, and the third and fourth causes of action are dismissed; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within twenty days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 320, 80 Centre Street on October 30, 2013, at 9:30 AM.

The foregoing constitutes the decision and order of the court.

Date: 9/10/13
New York, New York



Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**