Manchanda v Blockchain of Things, Inc.
2020 NY Slip Op 31773(U)
June 4, 2020
Supreme Court, New York County
Docket Number: 656523/2019
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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RAHUL MANCHANDA

Plaintiff,

- v -

BLOCKCHAIN OF THINGS, INC.,

Defendant.

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INDEX NO. 656523/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 22, 23, 24, 25, 26, 29

were read on this motion to/for DISMISS.

Defendant's motion to dismiss is denied.

Background

Plaintiff claims that in July 2017, he entered into a contract with defendant where plaintiff invested $20,000 to fund expenses for the launching of a crowdfunding campaign relating to cryptographic tokens. He insists he was supposed to be paid through a combination of both cash and crypto tokens. Plaintiff contends that he never received the money owed to him despite defendant raising a lot of money.

Defendant moves to dismiss on the ground that plaintiff's allegations are insufficient. It points out that plaintiff failed to articulate when the crowdfunding campaign took place, how many investors were involved and how much money was raised: plaintiff only claims he is owed $20,000 in damages. Defendant contends that plaintiff interfered with an SEC investigation into

this campaign and that there is no case or controversy ripe for this Court until that investigation is resolved.

Defendant also insists that plaintiff started an almost identical action in this court (which was later removed to federal court). That case was eventually dismissed with prejudice and defendant contends that plaintiff cannot attempt to relitigate his claims in this forum. Defendant argues that the doctrine of res judicata prevents plaintiff from pursuing his claims here—it emphasizes that the requested relief arises from the same transaction (the $20,000 investment). Defendant acknowledges that it was not a party to the federal case. However, defendant argues that one of the defendants in the federal case was Mr. De Castro (the founder and CEO of defendant), that it is in privity with Mr. De Castro and that defendant was a necessary party in the federal case.

Defendant insists that this case should be transferred to the New York City Civil Court because the amount in controversy is below the threshold for a matter in Supreme Court. Finally, defendant insists that it is discussing a settlement with the SEC and that this case should be stayed until those negotiations are completed; otherwise plaintiff's purported injuries are merely hypothetical.

In opposition, plaintiff emphasizes that defendant was not a party to the federal action and, therefore, res judicata does not apply. Plaintiff contends that the causes of action in the federal case included trespass, extortion, blackmail, harassment and securities fraud while, here, plaintiff seeks redress concerning the contract with defendant. Plaintiff argues that this case should not be transferred to Civil Court because he is entitled to more than $25,000; specifically, he says he should have received a cash portion of the payout which far exceeds the threshold in

this Court. Plaintiff also submits a copy of a purported SEC settlement agreement between defendant and the SEC, thereby nullifying defendant's request for a stay.

In reply, defendant argues that the SEC settlement ordered defendant to return funds to those investors who purchased tokens in the crowdfunding campaign who request a return. Defendant argues that there is no case or controversy because the amount of refunds requested have not been finalized. It maintains plaintiff had a full and fair opportunity to litigate these issues and he chose to drop the case.

Discussion

A Court considering a motion to dismiss for failure to state a cause of action "must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference. We may also consider affidavits submitted by plaintiffs to remedy any defects in the complaint" (*Chanko v American Broadcasting Companies Inc.*, 27 NY3d 46, 52, 29 NYS3d 879 [2016]).

A motion to dismiss based on documentary evidence "may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314, 326, 746 NYS2d 858 [2002]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19, 799 NYS2d 170 [2005]).

"The doctrine of res judicata precludes a party from litigating a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter. Under New York's transactional approach to the rule, once a claim is brought to a final

conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (*Josey v Goord*, 9 NY3d 386, 389-90, 849 NYS2d 497 [2007] [internal quotations and citations omitted]).

Here, the Court finds that the voluntary dismissal of the federal action with prejudice does not have preclusive effect in this action. The defendant was not a party to that action and the causes of action were separate and distinct- the federal case did not involve a breach of contract claim. Simply because one of the defendants in the federal case is the CEO of defendant does not automatically implicate the doctrine of res judicata.

"It is well settled that a defendant who was not a party to a prior proceeding may nevertheless assert res judicata where [its] liability ... is altogether dependent upon the culpability of one exonerated in a prior suit; [a] person not a party to a prior action, but only derivatively or vicariously liable for the conduct of another, may invoke the res judicata effect of a prior judgment on the merits in that action in favor of the one primarily liable" (*Marinelli Assoc. v Helmsley-Noyes Co., Inc.*, 265 AD2d 1, 7, 705 NYS2d 571 [1st Dept 2000] [internal quotations and citations omitted]).

Defendant's liability in this case is not "altogether dependent" on the culpability of Mr. De Castro in the federal case. As stated above, the causes of action in the federal case included trespass, extortion, blackmail, harassment and securities fraud. That has little to do with the breach of contract claim asserted here- that plaintiff invested money and did not receive the money to which he claims he is entitled.

The Court also rejects the branch of defendant's motion asserting that the Court must dismiss because the amount in controversy is below $25,000. There is no minimum amount necessary to sue in Supreme Court. Plaintiff could have brought this case in the Civil Court of

the City of New York, and sometimes Supreme Court Justices send a case to Civil Court pursuant to CPLR 325(d). But the fact remains that Supreme Court is open to litigate claims of any amount. Our doors are open for claims of all types and amounts, including plaintiff's current claims.

Additionally, the SEC investigation and agreement do not require the Court to dismiss or stay this case. Defendant provided no basis for the Court to find that an action cannot be maintained simply because there is an SEC investigation or agreement concerning the same allegations. And the agreement contemplates certain actions defendant will take in an effort to avoid "greater civil penalties" from the SEC (NYSCEF Doc. No. 24 ¶ 43).

Nothing in the SEC agreement precludes plaintiff from bringing a lawsuit. In fact the agreement instructs defendant to tell each potential claimant about their claims "including the right to sue to recover the consideration paid for such security with interest thereon" (*id.* Undertakings, ¶ [2][c]). Although defendant may be correct that it is unable to currently calculate how much plaintiff might be due (assuming plaintiff is successful), that is not a basis to dismiss or stay the case. Contrary to defendant's claim, plaintiff's injury is not anticipated—he says he was supposed to get a share of the profits and he did not.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendant is denied and defendant must answer pursuant to the CPLR.

Conference: September 8, 2020 at 10 a.m. The parties are directed to consult the docket and this part's rules concerning whether the conference will take place virtually. They are

encouraged to submit a conference order signed by all parties for the Court's approval via e-filing prior to the conference.

6/4/2020
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE