Karen's Shipping, LLC v West Side Foods, Inc.
2020 NY Slip Op 33268(U)
October 1, 2020
Supreme Court, New York County
Docket Number: 653579/2019
Judge: Andrew Borrok

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK **PART** IAS MOTION 53EFM

Justice

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KAREN'S SHIPPING, LLC

Plaintiff,

- v -

WEST SIDE FOODS, INC.

Defendant.

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INDEX NO. 653579/2019

MOTION DATE 08/13/2020, 08/18/2020

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 52, 56

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, (i) West Side Foods, Inc., f/k/a West Side Poultry Co., Inc. and Thomas M. Ryan's (collectively, the **Defendants**) motion (Mtn. Seq. No. 004) to reargue is denied, and (ii) Karen's Shipping, LLC and Peter Abate's (collectively, the **Plaintiffs**) motion (Mtn. Seq. No. 003) to compel is granted solely to the extent that the Defendants are directed to produce any responsive documents for the period after September 2018 within 30 days of this decision and order.

The Relevant Facts and Circumstances

Familiarity with the facts is presumed (*see* Mtn. Seq. 002). On June 20, 2019, the Plaintiffs filed their Complaint alleging claims for (i) equitable accounting, (ii) unjust enrichment, and (iii) quantum meruit (NYSCEF Doc. No. 1). In response, the Defendants moved to dismiss pursuant

to CPLR § 3211(a)(7) (Mtn. Seq. No. 001). By a decision and order, dated December 18, 2019, the court granted the motion to dismiss solely to the extent that the first cause of action for equitable accounting was dismissed without prejudice (the **First Decision**; NYSCEF Doc. No. 15). The court also determined that the quasi-contract claims remained:

> See, that's the whole point is that [the Plaintiffs] think that you got your client [Defendants] got this business based on them and that it's unfair and unjust for your client to be allowed to keep the spoils of this introduction given the fact that there was a basic understanding of compensation as it related to these introductions. I'm sorry. So here's what I'm doing; okay? I am dismissing the first cause of action. I don't think that there's a special relationship -- wait, just let me – and then you can say what you want to say, but I'm not dismissing 2 or 3.

(*12/18/2019 Tr.*, NYSCEF Doc. No. 29 at 19:17-20:3).

On January 8, 2020, the Plaintiffs filed an Amended Complaint again alleging claims for (i) equitable accounting, (ii) unjust enrichment, and (iii) quantum meruit (NYSCEF Doc. No. 18) and the Defendants responded by moving to dismiss once more (Mtn. Seq. 002). By a decision and order, dated July 16, 2020, the motion was granted solely to the extent that the first cause of action for equitable accounting was dismissed (NYSCEF Doc. No. 42). The claims for quantum meruit and unjust enrichment survived because:

> Inasmuch as Mr. Ryan and West Side Foods again argue that quantum meruit and unjust enrichment causes of action fail to state a claim because of the statute of frauds, the court has already rejected this argument on the record at oral argument on the prior motion (*12/18/19 Tr.*, NYSCEF Doc. No. 29 at 17-20). As the court observed at oral argument, ***Mr. Abate and Karen's Shipping have presented a check (i.e., a writing) for $230,000 as evidence of the agreement (id.). Moreover, the statute of frauds does not apply to causes of action based on theories of quantum meruit and unjust enrichment where the plaintiff does not seek to enforce an oral agreement, but rather seeks only to recover the reasonable value of property or services rendered by the plaintiff in reliance on an alleged promise*** (see Grimes v Kaplin, 305 AD2d 1024, 1024 [4th Dept 2003]). As the court noted at oral argument on the prior motion, and as

> is the case here, Mr. Abate and Karen's Shipping do not seek to enforce any oral contract or promise. Rather, they seek only to recover the amount by which Mr. Ryan and West Side Foods were enriched on account of Mr. Abate's services and business contacts. The Amended Complaint sufficiently makes out their claims.

(*id.* at 6 [emphasis added]).

On April 30, 2020, the Defendants provided a response to the Plaintiffs' first notice for discovery and inspection of documents (NYSCEF Doc. No. 49). By order, dated July 23, 2020, the parties were to meet and confer over four discovery issues and the Plaintiffs were granted leave to file a motion in the absence of a resolution: "(1) certain sales and backup information from June 2013 to the present, (2) information regarding suppliers, (3) backup regarding the plaintiff's compensation, and (4) documents relating to Certified Angus Beef" (NYSCEF Doc. No. 44).

On August 13, 2020, the Plaintiffs filed a motion to compel the Defendants' production of responsive documents for the period after September 2018 and an affidavit to confirm that certain documents did not exist. On August 17, 2020, the Defendants filed a motion to reargue the Second Decision.

Discussion

I. Mtn. Seq. 004 (Defendants' Motion to Reargue)

To succeed on a motion for reargument, a party must demonstrate that the court either (1) overlooked or misapprehended the relevant facts, or (2) misapplied a controlling principle of law (*William P. Paul Equip. Corn. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]). Reargument is not intended "to afford the unsuccessful party successive opportunities to reargue issues previously

decided or to present arguments different from those originally asserted" (*Haque v Daddazio*, 84 AD3d 940, 242 [2d Dept 2011]; *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]).

The Defendants argue that they should be granted leave to reargue because (i) the court should have determined that the statute of frauds barred the Plaintiffs' claims for unjust enrichment and quantum meruit, (ii) the portion of the Plaintiffs' claims for damages accruing after the parties terminated their business relationship in September 2018 should have been dismissed, and (iii) that the cheque presented by the Plaintiffs did not constitute a writing so as to bring their claims outside of the statute of frauds. All of these arguments fail.

The court neither overlooked nor misapprehended the relevant facts or law. As discussed in both the First Decision and the Second Decision, the court determined that the Plaintiffs' claims for unjust enrichment and quantum meruit were sustained because they did not seek to enforce an oral agreement, but only to recover the reasonable value of property or services rendered. In other words, although the Defendants premise their arguments for dismissal on the basis that an oral agreement between the parties existed, the court reached the opposite conclusion when it determined that the Plaintiffs "do not seek to enforce any oral contract or promise" (NYSCEF Doc. No. 42 at 5). As a result, the statute of frauds did not apply to bar the Plaintiffs' unjust enrichment and quantum meruit claims (*id.* at 6; *see Castellotti v Free*, 138 AD3d 198, 208 [1st Dept 2016] ["theory of unjust enrichment is not precluded by the statute of frauds because it is not an attempt to enforce the oral contract but instead seeks to recover the amount by which [defendant] was enriched at [plaintiff's] expense"], citing *Grimes v Kaplin*, 305 AD2d 1024, 1024 [4th Dept 2003]). In any event, even if the statute of frauds were to apply, the court held

that the cheque presented by the Plaintiffs was a sufficient writing so as to bring the Plaintiffs' claims outside the statute of frauds (*id.* at 6; NYSCEF Doc. No. 31).

To the extent that the court misstated the temporal scope of damages sought by the Plaintiffs in the Second Decision, this misstatement did not impact the court's understanding of the Amended Complaint as a whole and the Defendants now acknowledge that the Plaintiffs seek "both pre-termination and post-termination damages" (NYSCEF Doc. No. 55 at 3-4). For the avoidance of doubt, the court reiterates that "any claims asserted in this action are limited to those accruing ***after June 2013*** based on the applicable six year statute of limitations" (NYSCEF Doc. No. 42 at 6 [emphasis added]). Accordingly, the Defendants' motion to reargue is denied.

The Plaintiffs' cross-motion for sanctions under 22 NYCRR § 130-1.1(c)(2) is denied because it is within the Defendants' rights to file a motion to reargue a prior motion.

II. Mtn. Seq. 003 (Plaintiffs' Motion to Compel)

The Plaintiffs argue that the Defendants should be compelled to produce (i) responsive documents for the period after September 2018 and (ii) an affidavit to confirm that certain categories of requested documents do not exist.

For the reasons set forth above, the Plaintiffs' quasi-contract claims accrue from June 2013 onward, which includes the time period after the parties terminated their business relationship in September 2018. Therefore, the Defendants are directed to produce any responsive documents for the period after September 2018 within 30 days of this decision and order. The Defendants'

request to order the Defendants to produce an affidavit to confirm that certain documents do not exist is denied because the parties may confirm the same either through non-party subpoenas or at deposition.

For the avoidance of doubt, the Plaintiffs' request for the Defendants' to pay their costs and attorneys' fees incurred in the instant motion pursuant to CPLR § 3126 is denied.

Accordingly, it is

ORDERED that the Defendants' motion (Mtn. Seq. No. 004) to reargue is denied; and it is further

ORDERED that the Plaintiffs' motion (Mtn. Seq. No. 003) to compel is granted solely to the extent that the Defendants are directed to produce any responsive documents for the period after September 2018 within 30 days of this decision and order; and it is further

ORDERED that the parties shall appear for a remote conference on November 9, 2020 at 11:30am.

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10/1/2020
DATE

ANDREW BORROK, J.S.C.

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