

Genius Media Group, Inc. v Bond Collective
2021 NY Slip Op 32444(U)
November 17, 2021
Supreme Court, Kings County
Docket Number: Index No. 504082/2021
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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GENIUS MEDIA GROUP, INC.,

Plaintiff,

Decision and order

- against -

Index No. 504082/2021

BOND COLLECTIVE, ET AL,

Defendants,

November 17, 2021

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff moves pursuant to CPLR §3212 seeking summary judgement regarding money owed based upon a guaranty. The defendants oppose the motion arguing that the plaintiff has failed to satisfy its burden that there are no questions of fact. Papers were submitted by all parties and after reviewing the arguments of all parties this court now makes the following determination.

Background

On September 1, 2018 the plaintiff licensor and defendant licensee entered into an agreement concerning space owned by the plaintiff located at Third Street in Kings County. The defendant Shlomo Silber executed a guaranty concerning any unpaid license fees. The license fees were paid through February 2020. The license was revoked in November 2020 and the defendant vacated the premises at the end of December 2020. The plaintiff asserts there are outstanding license fees owed and has sued the defendants for such unpaid fees. The plaintiff now moves seeking

summary judgement arguing the defendant Silber unconditionally guaranteed the fees and there are no questions of fact such fees are outstanding. As noted, the motion is opposed on the grounds there are questions of fact which foreclose a summary determination.

Conclusions of Law

Summary judgement may be granted where the movant establishes sufficient evidence which would compel the court to grant judgement in his or her favor as a matter of law (Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 [1980]). Summary judgement would thus be appropriate where no right of action exists foreclosing the continuation of the lawsuit.

Generally, it is for the jury, the trier of fact to determine the legal cause of any injury (Aronson v. Horace Mann-Barnard School, 224 AD2d 249, 637 NYS2d 410 [1st Dept., 1996]). However, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Derdiarian v. Felix Contracting Inc., 51 NY2d 308, 434 NYS2d 166 [1980]).

Thus, to succeed on a motion for summary judgement it is necessary for the movant to make a prima facie showing of an entitlement as a matter of law by offering evidence demonstrating the absence of any material issue of fact (Winegrad v. New York University Medical Center, 64 NY2d 851, 487 NYS2d 316 [1985]).

Moreover, a movant cannot succeed upon a motion for summary judgement by pointing to gaps in the opponents case because the moving party must affirmatively present evidence demonstrating the lack of any questions of fact (Velasquez v. Gomez, 44 AD3d 649, 843 NYS2d 368 [2d Dept., 2007]).

It is well settled that summary judgement is appropriate where an unconditional guaranty to make certain payments has been presented (Barnaba Realty Group LLC v. Solomon, 121 AD3d 730, 994 NYS2d 356 [2d Dept., 2014]). In this case the guaranty states that the guarantor, defendant Silber, "absolutely, unconditionally and irrevocably guarantees to Licensor the full and prompt payment and performance and observance of all of the liabilities, responsibilities and obligations of Licensee under the License ("Licensee Obligations"), all irrespective of the validity, binding effect, legality or enforceability which might now or hereafter or otherwise constitute a legal or equitable discharge or defense of a guarantor" (see, Good Guy Guaranty, September 1, 2018, ¶ 1).

In opposition, the defendant raises two arguments seeking to oppose summary judgement. The first argument raised is that the defendant Bond is not licensed to conduct business in the State of New York. However, even if that is true it does not raise any issue of material fact necessitating a denial of summary judgement. Pursuant to BCL §1312 and Limited Liability Law §808

a foreign corporation not authorized to do business in the state of New York may not maintain any actions within the state (Pergament Home Centers, Inc. v. Net Realty Holding Trust, 171 AD2d 736, 567 NYS2d 292 [2d Dept., 1991]). However, in this case the defendant Bond that is allegedly not authorized to do business in New York was sued by the plaintiff and is not pursuing any action. Indeed, pursuant to LLC Law §808(a) "a foreign limited liability company doing business in this state without having received a certificate of authority to do business in this state may not maintain any action, suit or special proceeding in any court of this state unless and until such limited liability company shall have received a certificate of authority in this state" (id). There is no cause of action asserting the lack of such authorization, rather, such corporation may not maintain any such action in New York. Therefore, the corporate status of defendant Bond, or co-defendant Coworkrs, who is not even the subject of this motion fails to raise any question of fact.

Next, the defendant argues the lease underlying the obligation has not been presented. However, the motion is not based upon the lease, rather it is based upon the guaranty. Therefore, the actual information contained in the lease is not relevant and fails to raise any question of fact. Thus, this action differs from a mortgage foreclosure action as argued by

the defendant, because in a mortgage foreclosure action the suit pertains directly to the mortgage document itself, without which a lawsuit cannot proceed. In any event, the lease has been produced.

Lastly, no questions of fact are raised by the date contained on the notarization of the guaranty. That date does not raise any question whether the guaranty is somehow rendered invalid. Therefore, based on the foregoing, the motion seeking summary judgement is granted.

The parties will be notified of a hearing date before a judicial hearing officer to decide the precise amount due including attorney's fees and whether the imposition of 150% interest for December 2020 use and occupancy was proper and all amounts asserted by the plaintiff. The hearing will only involve the amount due.

So ordered.

ENTER:



DATED: November 17, 2021
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC