

Noor Staffing Group, LLC v Christoforou-Gioules

2022 NY Slip Op 31853(U)

June 10, 2022

Supreme Court, New York County

Docket Number: Index No. 651459/2018

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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NOOR STAFFING GROUP, LLC,
Plaintiff,

- v -

IRENE CHRISTOFOROU-GIOULES, MARIA
PANAYIOTOU-MAMOUNAS
Defendants.

INDEX NO. 651459/2018
MOTION DATE N/A
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 73

were read on this motion for PARTIAL SUMMARY JUDGMENT.

Upon the foregoing document, and in consideration of oral argument on February 25, 2020 before Justice Scarpulla, it is

ORDERED that Defendants’ motion for partial summary judgment striking Plaintiff’s claim for expectation damages is **granted**.¹

The only remaining claim in this action is that Defendants breached a duty in the Employment Agreement to negotiate in good faith a separate administrative-services agreement between Plaintiff and Defendants’ company, nonparty All in 1 SPOT (“All in 1”). The plain

¹ The Court notes that Plaintiff’s original complaint alleged that its damages of at least \$1,000,000.00 included lost profits, but Plaintiff removed references to lost profits in its amended complaints (NYSCEF 25, 43). On September 23, 2019, Defendants served Plaintiff with interrogatories seeking, among other things, quantification and explanation of Plaintiff’s damages. Plaintiff objected to the damages interrogatories and would only say that its damages included out-of-pocket losses, lost profits, and other lost business opportunities (NYSCEF 63 at 17–18).

language of the Employment Agreement makes clear that the successful negotiation of an administrative-services agreement between All in 1 and Plaintiff was a condition precedent to any contractual obligation to retain Plaintiff.² It is well settled that “parties may enter into a binding contract under which the obligations of the parties are conditioned on the negotiation of future agreements. In such a case, the parties are obliged to negotiate in good faith. But that obligation can come to an end without a breach by either party” (*IDT Corp. v Tyco Group, S.A.R.L.*, 23 NY3d 497, 502 [2014]). Defendants’ obligation under the Employment Agreement in this respect was to negotiate in good faith. Defendants were “neither bound to agree to [a contract] nor to continue the negotiating process” (*Goodstein Constr. Corp. v City of New York*, 80 NY2d 366, 373 [1992]).

In similar circumstances, courts have held that “lost profits are not available where no agreement is reached” (*L-7 Designs, Inc. v Old Navy, LLC*, 647 F3d 419, 431 [2d Cir 2011], citing *Goodstein*, 80 NY2d at 374). Rather, “out-of-pocket costs incurred in the course of good faith partial performance are appropriate” (*L-7 Designs*, 647 F3d at 431; *Arcadian Phosphates, Inc. v Arcadian Corp.*, 884 F2d 69, 74 n. 2 [2d Cir 1989]). Allowing expectation damages “would be basing damages . . . on the prospective terms of a nonexistent contract which the

² Section 5(a) of the Employment Agreement states in relevant part: [I]n the event that [All in 1] is awarded a bid or agreement from the DOE, NSG shall be the exclusive provider of administrative services, including but not limited to financial management services and professional employer organization or human resources services (but solely with respect to [All in 1]’s employees that would be servicing [All in 1]’s bid or agreement) provided, however, that: (i) NSG shall only render such services as permitted by law and by the DOE; (ii) such services shall be rendered by NSG pursuant to a separate agreement, the terms and conditions of which shall be negotiated by the Parties in good faith and any compensation paid to NSG shall be consistent with fair market value; and (iii) NSG shall assist [All in 1] with capital requirements and financing, to the extent permitted by law, and pursuant to a separate written agreement with [All in 1]. (NYSCEF 59).

[defendant] was fully at liberty to reject. It would, in effect, be transforming an agreement to negotiate for a contract into the contract itself” (*Goodstein*, 80 NY2d at 373).³

Plaintiff’s attempt to transform Defendants’ duty to negotiate in good faith into a binding agreement by All in 1—which was not a party to the Employment Agreement—to hire Plaintiff is unavailing. Plaintiff offers no explanation as to how Defendants, through the Employment Agreement signed in their individual capacities, could legally bind All in 1 to retain Plaintiff as a services provider. Nor can it be concluded that Defendants, in their individual capacities, are guarantors under a proposed agreement to which All in 1 has not agreed, for the anticipated profits from rendering administrative services to All in 1 (*see Goodstein*, 80 NY2d at 371, 374-75; *MG W. 100 LLC v St. Michael’s Prot. Episcopal Church* (43 Misc 3d 1231(A) [Sup Ct, NY County 2014], *affd*, 127 AD3d 624 [1st Dept 2015]).

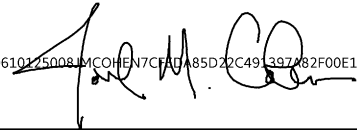
Accordingly, Plaintiff’s demand for expectation damages fails as a matter of law.

IT IS FURTHER ORDERED that the parties file a proposed amended discovery schedule within seven (7) days of the date of this Order.

³ Although not a ground for distinguishing the applicable case law in any event, the Court notes that Plaintiff’s claim that fair market value can “be easily measured and determined with reasonable certainty,” is inconsistent with its argument that without discovery, “Plaintiff simply cannot quantify and explain, for the purposes of a verified response to interrogatories, the extent of its damages” (NYSCEF 65 at 7-8 [Pl. br. in opp.]).

This constitutes the decision and order of the Court.

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6/10/2022

DATE

JOEL M. COHEN, J.S.C.

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CASE DISPOSED

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NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: