

M&R Mediterranean Corp. v Bytelogics Inc.
2022 NY Slip Op 33359(U)
October 4, 2022
Supreme Court, New York County
Docket Number: Index No. 653748/2018
Judge: Andrea Masley
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**SUPREME COURT OF THE STATE OF NEW YORK
 NEW YORK COUNTY**

PRESENT: HON. ANDREA MASLEY PART 48
Justice
 -----X

M&R MEDITERRANEAN CORP., INDEX NO. 653748/2018

Plaintiff,

- v -

BYTELOGICS INC. and KEITH SIILATS,

Defendant.

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This is an action for breach of a July 12, 2017 asset purchase agreement (APA) pursuant to which plaintiff M&R Mediterranean Corp., sold its bar to defendant Bytelogics Inc., of which defendant Keith Siilats is a principal. (NYSCEF Doc No. [NYSCEF] 129, Asset Purchase Agreement [APA]; NYSCEF 126, Amended Complaint.) The remaining causes of action are: (1) for injunctive relief enjoining Siilats from using the business name “Mayahuel”; (2) for breach of contract against Bytelogics; (3) for unjust enrichment against Siilats because he failed to comply with ¶ 4.1 of the APA which required defendants to forgive the rent arrears by discontinuing the Landlord and Tenant action (index no. 076422/2015); (4) against Bytelogics, Inc. for failure to pay Shapiro consulting fees in the amount of \$6,000; and (5) for attorneys’ fees.¹ (NYSCEF 60, Court tr. at 13:14-19:15 [mot. seq. no. 002] [May 8, 2019].)

¹ Plaintiff withdrew the fifth cause of action. (NYSCEF 47, Decision and Order [mot. seq. no. 002]; NYSCEF 60, tr at 2:23-3:15 [mot. seq. no. 002].)

OTHER ORDER – NON-MOTION

Defendants' counterclaims include: (1) conversion; (2) breach of contract; (3) declaratory judgment that plaintiff has no valid trademark for "Mayahuel." (NYSCEF 84 Third Amended Answer and Counterclaims.)

Shapiro, principal of plaintiff, testified that Siilats was the landlord of the premises at issue, 304 East 6th Street in New York City. (NYSCEF 152, Shapiro tr. at 27:17-18.) Shapiro took over operations of the bar named "Mayahuel" at the premises in 2010. (*Id.* at 27:16-17.) After winning an award for the best new cocktail in 2010, Shapiro planned to expand the Mayahuel brand with bars in Chicago and LA and was searching for investors. (NYSCEF 133, communications with investors.) However, the parties engaged in litigation when Siilats built two floors on the building without necessary licenses causing significant issues in plaintiff's bar. (NYSCEF 152, Shapiro tr. at 28:1-9.) Subsequently, Siilats obtained a judgment against plaintiff for \$107,900.39 for unpaid rent. (NYSCEF 146, May 30, 2017 Civil Court Judgment.) Accordingly, the parties entered into the APA pursuant to which plaintiff sold the bar to Bytelogics. (NYSCEF 129, APA.)

The APA provides that Bytelogics would discontinue the landlord tenant proceeding against plaintiff. (NYSCEF 129, APA ¶2.) The parties agreed that Shapiro would operate the bar from the closing date of July 12, 2017 through July 31, 2017 (§10.1) or August 10, 2017 (§10.2), the expiration date of the liquor license in exchange for \$2,000 per week. (NYSCEF 129, APA ¶¶ 10.1, 10.2.) The most important APA provision to plaintiff was the prohibition against using the name of the bar "Mayahuel." (NYSCEF 129, APA ¶ 3; NYSCEF 152, Shapiro tr. at 30:25-31:9.) However, prior to the

APA, plaintiff took no steps to protect the name except to trademark the logo.

(NYSCEF 152, Shapiro tr. at 50:6-12.)

The court found Shapiro's testimony consistent and credible.

Stephen Chrisanthus, a financial consultant, and Shapiro's college friend, testified that he has a master's degree in public relations, has passed exams for series 7, 56, and 215 and was editor of Frequent Flier Magazine. (NYSCEF 151, Chrisanthus tr. at 43:11-44:25, 59:13-15.) More importantly, he has years of experience in various capacities working and owning successful bars. (*Id.* at 45:4-21.) He was helping Shapiro develop his concept of a mezcal bar and locate funds to franchise Mayahuel. (*Id.* at 44:9-15, 47:5-16.) Chrisanthus testified that Shapiro, and his two partners, are well known names in the cocktail bar circuit. (*Id.* at 53:5-7.) However, Chrisanthus explained that investors do not want to invest in a problem. (*Id.* at 54:4-12.) According to Chrisanthus, this lawsuit and defendants' use of the name is a problem. (*Id.* at 54:14-16, 57:12-17.) The court found Chrisanthus credible.

Siilats testified that he bought the building in 2005; plaintiff was already a tenant. (NYSCEF 152, Siilats tr. at 56:19-20.) Siilats admitted that he performed construction on the building which resulted in damages to plaintiff in the amount of \$60,000. (*Id.* at 58:21-59:1.) Siilats admitted that.

"7. When it became clear that the Plaintiff was not honoring the terms of the APA, Bytelogics interpreted this to mean the contract had been voided, thus terminating any obligation to Plaintiff avoid using the name 'Mayahuel.' 8. Notwithstanding that Bytelogics was no longer encumbered by the obligation of the APA, Bytelogics modified the name to 'Mayahuel Mariposa,' which developed, in part because we partnered with award winning barmen from my home country Estonia who have a restaurant called Butterfly there. Since 'Mariposa' means "Butterfly" in Spanish, we called the restaurant Mayahuel Mariposa".

(NYSCEF 51, Siilats aff, ¶¶ 7-8.) Siilats testified that he changed the name to Mayahuel Mariposa after August 10, 2017. (NYSCEF 152, tr. at 99:22-25.) Siilats' assertion that he "modified the name legally to Mayahuel Mariposa" (*id.* at 68:9-10), does not make it so and contradicts his testimony repeatedly denying that he used the name Mayahuel (See, e.g., *id.* at 65:18-66:2.). Siilats lied. Likewise, the court found not credible Siilats' testimony that he could not recall if he complied with the APA by filing a discontinuance in Landlord tenant court. (*Id.* at 48:6-9.) Finally, defendants insisted on calling defendants' exhibit 7, "bank statements," but the document is actually a spreadsheet created by Siilats, which was unreliable. (NYSCEF 152, Siilats tr. at 84:4-87:5, 87:15-19; see NYSCEF 143, defendants' trial exhibit 7.)

Defendants' counterclaims are dismissed because Siilats was not credible which is evident from throughout the record. To give but a few examples: (1) Siilats insisted that the Facebook message to customers giving a birthday discount proved that he changed the name of the bar. (NYSCEF 151, Siilats tr. at 31:6-11.) However, the message actually included the name "Mayahuel." (*Id.* at 66:13-67:4; NYSCEF 141 at 2 ["We'd like to celebrate your birthday, but we don't know when it is! Share your birthday with Mayahuel 304 and we'll send you a special offer when your big day is coming up."].) Despite this irrefutable documentary evidence, Siilats repeatedly testified that the Facebook message was never sent. (See NYSCEF 151, tr. at 67:5-68:8.) However, this denial undermines defendants' argument that the Facebook messages prove that defendants changed the name of the bar. If the messages were never sent, then defendants cannot rely on them as proof that they broadcast a new name. (2) Siilats testified that he is an accountant, (*id.* at 74:5-6) but he is not an accountant and is

unaware of what a CPA is. (*Id.* at 74:7-75:1.) This testimony was undermined by the fact that Siilats is a small business owner and landlord. On the other hand, the court questions Siilats' management skills since he was unfamiliar with the names of his employees. (See *id.* Siilats tr at 75:15-77:12.) (3) Siilats testified both that he has legal training and is not a lawyer. (*Id.* at 82:4-23.) Either way, he insisted on lecturing the court on his understanding of New York business law. (*Id.* at 81:8-82:23.) Siilats' reliance on the internet as the source of his legal training undermines his testimony which is simply wrong. For example, Siilats has no equitable right to self-help for breach of this contract. This is not a L&T action where a landlord may have a right of re-entry under the contract or a supply contract where the nonbreaching party may seek to cover at the market price, both of which are breach of contract actions where self-help is permitted. (*1414 Holdings, LLC v BMS-PSO, LLC*, 116 AD3d 641, 643 [1st Dept 2014] ["A landlord may, under certain circumstances, use self-help to peaceably re-enter commercial premises and regain possession. This common-law right to re-enter, however, can only be exercised if the lease expressly reserves that right."] [citations omitted]; *Fed.-Mogul Corp. v UTi, United States, Inc.*, 146 AD3d 468 [1st Dept 2017].) (4) When confronted with the signatures on the APA, Siilats feigned not to understand (NYSCEF 152, Siilats tr. at 60:9-61:16); and (5) as explained above, defendants incorrectly described their exhibit 7, created by Siilats, as bank statements. Accordingly, the court finds Siilats was not credible.

Defendants assert that their performance under the APA was excused because plaintiff failed to account for profits in July and August to which defendant was entitled to a percentage. The court gives Siilats' testimony regarding the bar's income no weight.

His conclusion that there must have been profits because he saw people entering the bar is insufficient. (NYSCEF 151, Siilats tr. at 9:7-10:2.) Many of the transactions challenged by defendants were admittedly payroll to bar staff, who were simply not known to Siilats. (*Id.* at 17:19-24.) Siilats' conclusion that payments were "unusual" or "suspicious" is entirely conclusory and without factual foundation. Siilats had electronic access to the bank account (*Id.* at 10:22-11:1) but never inquired of Shapiro or challenged the "unusual" or "suspicious" payments in real time. Siilats' testimony was undermined here by his failure to give a straight answer to questions by his own attorney and the court's questions. Finally, Siilats' interpretation of the APA is simply wrong. The APA provides: "10.3 Upon the Closing Date, Buyer will be entitled to all net proceeds from the operation of the Business and be responsible for all operating costs and expenses and liabilities of the Business." (NYSCEF 129, APA ¶ 10.3.) However, Siilats confuses gross income and net proceeds.

Shapiro testified credibly that there were no net proceeds. (NYSCEF 151, Shapiro tr. at 104:25-105:8.)

The court concludes that Siilats' testimony is unreliable because he was evasive, and the court observed him sweating profusely when the questioning became more rigorous.² Other indicia undermining Siilat's credibility is the long period of time it took before he answered questions. Moreover, his testimony would evolve as he was caught in untruths. For example, Siilats testified that he was the owner of Bytologics. (NYSCEF 151, Siilats tr at 87:7-9.) When he was reminded that there was a 50%

² The trial occurred in November and December 2021. The trial was virtual enabling the court to have a clear close-up view of all witnesses.

shareholder of Bytelogics, his role changed to being the sole executive. (*Id.* at 91:2-16.) Finally, his testimony, apparently from bed on the first day of trial, was disrespectful suggesting that he did not take the proceeding seriously. Accordingly, the court disregards Siilats' testimony in its entirety. (PJI 1:22.)³

Defendants called Mario Solberg, a patron of the bar, as a witness. He testified credibly that he referred to the bar as Mariposa. (NYSCEF 151, Solberg tr. at 96:24-97:2.) While credible, this witness's testimony was useless.

Plaintiff's first cause of action for an injunction is granted. The APA clearly provides that plaintiff did not sell the name of the bar "Mayahuel." (NYSCEF 129, APA ¶ 3.) The court rejects defendant's attempt at self-help. Defendant has no right to use the name Mayahuel and never had such a right. Tacking on Mariposa did not change anything.

Plaintiff's second cause of action is dismissed in the absence of any evidence on damages. While plaintiff established that defendants breached the APA by using the name Mayahuel, there was no offer of proof as to the damage caused by the breach.

Plaintiff has established its third cause of action for unjust enrichment against Siilats for failure to discontinue the landlord tenant action. Plaintiff is awarded \$100,000. Siilats admitted that he failed to discontinue the landlord tenant action as required by the APA to which he is not a party. (NYSCEF 151, Siilats tr. at 72:3-12.)

³ PJI 1:22 *Falsus in Uno*. "If you find that any witness has willfully testified falsely as to any important matter, the law permits you to disregard completely the entire testimony of that witness upon the principle that one who testifies falsely about one important matter is likely to testify falsely about everything. You are not required, however, to consider such a witness as totally unbelievable. You may accept so much of the witness' testimony as you deem true and disregard what you deem is false." (N.Y. Pattern Jury Instr.--Civil 1:22.)

“To state a claim for unjust enrichment, a plaintiff must allege that: ‘(1) the [defendant] was enriched, (2) at [plaintiff's] expense, and (3) that it is against equity and good conscience to permit the [defendant] to retain what is sought to be recovered.’”

(*Schroeder v Pinterest Inc.*, 133 AD3d 12, 26 [1st Dept 2015] [quoting *Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012] [internal citations omitted].) Plaintiff must have a relationship with the defendant that is not too attenuated and could have caused reliance or inducement. (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [citations omitted].) Paragraph 4.1 of the APA provides that the consideration for the sale of plaintiff's assets to Bytelogics was forgiveness of the rent arrears of \$100,000. While the APA does not specifically state that Siilats was to file a notice of discontinuance, it does provide that “the Buyer shall forgive all such debt or other obligations by written agreement reasonably satisfactory to Seller and will provide such agreement to Seller immediately following the release from sales tax liability by the New York State Department of taxation and Finance.” (NYSCEF 129, APA 4.1.) From the testimony, it is clear that Siilats and Shapiro understood that Siilats, the landlord, was to file a notice of discontinuance. Effectively, Bytelogics got the benefit of the bargain—the bar—but failed to pay for it by discontinuing the landlord tenant action. Here, Siilats, the landlord has an unsatisfied judgment for \$100,000 against plaintiff. The court rejects plaintiff's measurement of the damages, the price plaintiff paid for the liquor license of \$275,000 in 2005, because the liquor license benefits Bytelogics, the owner of the bar, not the landlord Siilats. Clearly, the parties to the APA have a relationship with Siilats and relied on Siilats to file a discontinuance which he failed to do. Since the record is

silent as to when the sales tax liability was released, interest will begin to accrue 60 days after the closing July 12, 2017 or September 12, 2017.

Plaintiff has established the fourth cause of action for breach of contract by failing to compensate Shaprio \$6,000. Defendants agreed as part of the compensation under the APA to pay Shapiro. It is undisputed that Shapiro performed the work by running the bar after the closing until the liquor license expired.

While plaintiff withdrew its claim for attorneys' fees, plaintiff is entitled to reimbursement for one-half of the cost of the trial transcripts as defendants asserted counterclaims which were tried as well.

Accordingly, it is

ORDERED that as to the first cause of action, the court finds in favor of plaintiff and directs that defendant, its employees, agents and assigns are enjoined from using "Mayahuel" or any combination thereof; and

ORDERED that the \$100 undertaking required to be filed when the court granted plaintiff's motion for a preliminary injunction is vacated in light of the permanent injunction; and it is further

ORDERED that the first and sixth causes of action are dismissed; and it is further

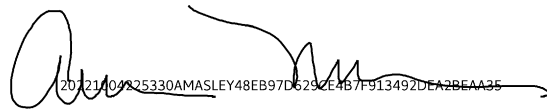
ORDERED that as to the third cause of action, plaintiff shall have judgment against defendants Siilats in the amount of \$100,000 with interest from September 17, 2017; and it is further

ORDERED that as to the fourth cause of action, plaintiff shall have judgment against Bytelogics for \$6,000 with interest from August 10, 2017; and it is further

ORDERED that defendants' counterclaims are dismissed with prejudice; and it is further

ORDERED that defendant is responsible for one-half the cost of the trial transcripts. If defendant fails to reimburse plaintiff within 10 days of the date of this decision, then plaintiff may include that amount in the judgment with interest from December 10, 2021. Plaintiff shall provide a copy of the invoice to the court by filing the invoice in NYSCEF within 10 days of the date of this decision; and it is further

ORDERED that the landlord-tenant judgment is hereby extinguished.



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10/4/2022

ANDREA MASLEY, JSC

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)