New York Law Journal

Court Decisions

Tuesday, February 25, 2003 SECTION 2 17

Football Player Is Awarded $105,000 For Appearances at Autograph Shows

THE PARTIES orally agreed that plaintiff professional football player would receive $112,500 for appearing at two autograph shows. Having autographed 2,500 items at both shows, plaintiff, claiming breach of contract, sued for $105,000 allegedly owed to him. The court awarded plaintiff $105,000, ruling that the parties had understood the material terms of their agreement and that an objective meeting of the minds was evident. Defendant's e-mail to plaintiff's agent advised that he was "fully aware that [he] owes [plaintiff] $112,500." A $7,500 check, bearing the notation "[Plaintiff] autographs, balance $105,000" had been issued to plaintiff's company. Observing that plaintiff was the aggrieved party, the court rejected defendant's contention that he never personally contracted with plaintiff, but rather, had contracted with plaintiff's agent, as inconsequential. It also noted that defendant had failed to raise even the color of a triable issue respecting his failure to pay plaintiff.

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Justice Lebowitz

DECISION OF INTEREST

MANNING v. BERTOLINI-This matter arises out of the breach of an alleged oral agreement in which plaintiff, a quarterback for the Indianapolis Colts, seeks to collect the balance of $105,000.00 allegedly owed to him on a $112,500.00 contract he had with defendants, Michael Bertolini and Triumph Sports Memorabilia & Promotions, Inc. The payment, according to plaintiff, was promised in exchange for Manning's appearance at two autograph shows. The following facts are not in dispute: (1) that in July of 2000, Bertolini arranged for plaintiff to appear at two autograph shows, the first of which Bertolini also attended (see Defendant Michael Bertolini's November 5, 2002 EBT, Exhibit C to Plaintiff's Affirmation in Support of Cross Motion, p. 61, 69-70; Plaintiff Peyton Manning's July 22, 2002 EBT, Exhibit G to Defendants' Cross Motion, pp. 10 -13); (2) that plaintiff appeared at the two shows in the fall of 2000, where he autographed 2500 items including footballs, jerseys, helmets and photographs (see Bertolini EBT, id., pp. 124-125; Manning EBT, id., pp. 10-12); (3) that on March 13, 2002, Bertolini e-mailed plaintiff's agent, IMG, advising that he is "fully aware that [he] owes Peyton $112,500.00" (see Bertolini EBT, id., pp. 80-83, p. 204,11. 16-18); (4) that by check dated July 22, 2001, drawn on an account entitled "Triumph Sports Memorabilia & Promotions, Inc.," and signed by Bertolini's mother, the company president, payment was issued to plaintiff's company, Pey Dirt, Inc., in the amount of $7500.00 bearing the notation "Peyton Manning autographs, balance $105,000.00" (see Plaintiff's Affirmation in Support of Cross Motion, Exhibit E; Bertolini EBT, id., p. 103, pp. 109-111; Manning EBT, id., p. 28), and (5) that Bertolini subsequently sold approximately one half of the items signed by plaintiff (see Bertolini EBT, id., pp. 124-128).

Insofar as it appears, cross motions for summary judgment by both parties were denied by Justice Joan Madden of the Supreme Court, New York County, on June 10, 2002 (under Index No. 660825/02), predicated on (1) plaintiff's inability, prior to depositions, to authenticate the documentary evidence submitted in support of the motion, and (2) defendants' failure to prove the Statute of Frauds defense. On defendants' motion, venue was changed to Richmond County on August 27, 2002.

As previously indicated, plaintiff's motion for summary judgment on his breach of contract cause of action is granted in the amount of $105,000.00.

It is axiomatic that in order to create a binding contract, "there must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms" (In the Matter of Express Industries and Terminal Corp., v. New York State Department of Transportation, 93 NY2d 584, 589 citing Martin Delicatessen, Inc. v. Schumacher, 52 NY2d 105,109). "Generally, courts look to the basic elements of the offer and the acceptance to determine whether there is an objective meeting of the minds sufficient to give rise to a binding and enforceable contract. While there must be a manifestation of mutual assent to essential terms, parties also should be held to their promises and courts should not be 'pedantic or meticulous' in interpreting contract expressions" (id. at 589-590 citing Cobble Hill Nursing Home v. Henry & Warren Corp., 74 NY2d 475,483).

In this case, after a review, inter alia, of the parties' deposition testimony, it is clear to this court that the parties understood the material terms of their agreement to wit: defendants' offer, and plaintiff's accepted of the payment of $112,500.00 in exchange for plaintiff's appearance at two separate autograph shows. An objective meeting of the minds is evident, and defendants' opposing argument as set forth in their cross motion, i.e., that they never personally contracted with plaintiff, but rather, with plaintiff's agent, is inconsequential, as plaintiff is the party aggrieved herein. Accordingly, plaintiff, as the proponent of the motion for summary judgment, has made a prima facie showing of his entitlement to judgment as a matter of law through, inter alia, his tender of Bertolini's March 13, 2002 e-mail, the cancelled check dated July 22, 2001, and Bertolini's uncontroverted testimony that he failed to pay plaintiff the amounts he understood to be due. In opposition, Bertolini has failed to raise even the color of triable issue (see Andre v. Pomeroy, 35 NY2d 361, 364) with respect to his company's failure, for whatever the reason, to pay plaintiff his due. In fact, even construing the evidence in the light most favorable to the party opposing summary judgment, as the court is constrained to do (see Matter of Benincasa v. Garrubbo, 141 AD2d 636), Bertolini's documentary and verbal admissions virtually mandate judgment in plaintiff's favor under these circumstances Bertolini's "[b]ald conclusory assertions, even if believable, are not enough to defeat summary judgment" (Denton Publs. v. Lilledahl, 112 AD2d 658, 658-659). Notably, the amount of the alleged debt is undisputed.

The balance of the applications are denied as moot. The court would note, however, that defendants' argument in support of summary judgment predicated on the ground that plaintiff's agent, "IMG" is not in compliance with sections 171 and 172 of the General Business Law is unavailing, as IMG was incidental to the procurement of the underlying autograph agreements (see, General Business Law §171[8]), and is not a party to this action.

Accordingly, it is

ORDERED, that the cross motion for summary judgment of plaintiff, Peyton Manning, is granted in the sum of $105,000.00 plus interest and costs; and it is further,

ORDERED, that the balance of the motion and cross motions are denied as moot; and it is further,

ORDERED, that the Clerk of the Court enter judgment accordingly.