

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

**CAITLIN FERRARI, on Behalf of Herself and All
Others Similarly Situated,**

Plaintiff

DECISION

Index No. 804125-2014

v.

**STEPHANIE MATECZUN,
CITADEL BROADCASTING COMPANY,
CITADEL COMMUNICATIONS COMPANY, LTD., and
BUFFALO BILLS, INC.**

Defendants

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TIMOTHY J. DRURY, J.S.C.

The history of this litigation is set forth in the various decisions issued by this Court. Five prior members of the Buffalo Bills cheerleading squad initially brought this action to recover sums they have claimed they are owed under the state wage law. They have also sought class action status for certain of their fellow members. The Jills cheerleaders have claimed that they were wrongly treated as independent contractors while they were in fact employees of the Defendants. They have sued The Buffalo Bills (the Bills), Citadel Broadcasting Company (Citadel), Stephanie Mateczun (Mateczun) and Stejon Production Corporation (Stejon) claiming that these entities were their employers.

The Plaintiff Ferrari was granted leave to amend her First Amended Complaint. Among the amendments was the addition of the National Football League (the NFL) as a Defendant. Plaintiff added the NFL alleging that it had approved two agreements between the Bills and Citadel which concerned radio broadcasting and the conduct of the Jills cheerleading squad. The agreements specified that they were not to take effect unless approved by the NFL and that each of the Jills was required to sign a contract and release stating that she was working as an independent contractor and not being paid for working Bills games.

The newly amended Complaint accuses the Bills of engaging in a fraudulent scheme to misclassify the Jills as independent contractors. The Complaint alleges that the NFL aided and abetted the Bills in the scheme. The Complaint further alleges that the NFL has been unjustly enriched by its conduct and that the Plaintiffs are entitled to quantum meruit to recoup the value of the services for which they were not paid.

The NFL has moved pursuant to CPLR Section 3211(a) for a judgment dismissing the causes of action on the ground that (1) a defense is founded on documentary evidence and (2) the pleading fails to state a cause of action.

A Motion to Dismiss on the ground that the action is barred by documentary evidence may only be granted "Where the documentary evidence utterly refutes factual allegations, conclusively establishing a defense as a matter of law..." (*Goshen v Mutual Life Ins. Co.*, 98 NY2d 314, 326).

In determining a Motion to Dismiss for failure to state a cause of action, the Court must accept as true each and every allegation made by Plaintiff and limit its inquiry to the legal sufficiency of the Plaintiff's claim. Unlike a Motion for Summary Judgment where the Court searches the record and assesses the sufficiency of the parties' evidence, a Motion to Dismiss rests on the Court's determination as to the adequacy of the pleadings (citation and quotation omitted) (*Davis v. Boenheim*, 24 NY 3d 262, 268).

The NFL's position is that each of the Plaintiff's claims must fail as a matter of law.

The NFL has submitted the affidavit of Rachel L. Margolies, its senior counsel, who has stated that she approved both agreements between the Bills and Citadel. She has stated, however, that she was only concerned with the radio broadcasting portion of the agreements and not at all with the Jills portion. The NFL also submitted Roger Goodell's affidavit; he is the NFL's Commissioner. Mr. Goodell stated that he has no knowledge of the conduct of the Jills squad or the terms of their employment. The stamp of his signature was affixed to the two agreements to approve them.

The NFL has argued that it never approved the terms and conditions of the Jills' employment. It has stated that the portion of the agreements between the Bills and Citadel

relating to the conduct of the Jills squad was of minor importance and never approved by the NFL. It has stated that the Plaintiffs have offered no proof that the NFL had any role, other than in approving these two agreements, in approving the conduct of the Jills before or after the agreements.

The NFL has also argued that the Plaintiffs' claim for unjust enrichment is too attenuated to be actionable because the relationship between the Plaintiffs and the NFL was not such that it caused reliance or inducement. The NFL has argued that the Plaintiffs were not aware of any NFL involvement until the agreements at issue were disclosed during discovery related to the Bills' Motion to Dismiss.

The NFL has also argued that the unjust enrichment claim cannot be sustained since the services by the Jills were not performed at the NFL's behest, but rather at the behest of the other Defendants. The NFL has argued that the Plaintiffs have failed to allege any facts showing that it received any benefit from the services they provided.

The NFL has moved to dismiss the Plaintiffs' quantum meruit claim for similar reasons. It has also argued that the quantum meruit claim must fail because the Plaintiffs have not alleged that the NFL requested or accepted their services. The NFL has also argued that the Plaintiffs did not expect compensation from the NFL for their services.

The NFL has sought dismissal of the Plaintiffs' aiding and abetting claims first on the grounds that the labor law and quasi-contractual related claims are illogical and not recognized under the law. The Plaintiffs have not relied on such claims in their response. They have alleged that the NFL aided and abetted the other Defendants in perpetrating common law fraud. As to this claim, the NFL has argued that the Plaintiffs have not met the requisite standard of showing that it had actual knowledge of the fraud involved. It has

cited Ms. Margolies' affidavit in which she has denied any knowledge of the workings of the Jills squad in support of this proposition.

The NFL has also taken the position that the Plaintiffs cannot allege that it provided substantial assistance in furtherance of the purported fraud. It has argued that as a matter of course, the NFL is not required to review cheerleader agreements, and that it does not have any role in how NFL clubs classify their cheerleaders.

The NFL has also argued that it did not approve any agreements relating to the Jills other than the two agreements at issue. It has argued that because of the limited nature of its involvement with the cheerleading squad, it could not have provided substantial assistance to an ongoing fraud and could not have been the proximate cause of any harm.

A Plaintiff alleging a claim for aiding and abetting common law fraud must allege the existence of the underlying fraud, actual knowledge and substantial assistance (See *Oster v Kirschner*, 77 AD3d 51, 55). The Plaintiffs have made allegations of common law fraud against the Defendant Bills, Stejon, Mateczun and Citadel; it is embodied in their Eighth cause of action (Paragraphs 416, 426). The NFL has not challenged the sufficiency of Plaintiff's underlying fraud allegations.

The NFL has argued that the Plaintiffs have not sufficiently pleaded the elements of actual knowledge and substantial assistance. But, "actual knowledge need only be pleaded generally, particularly at the pre-discovery stage, because a plaintiff lacks access to the very discovery materials which would illuminate a defendant's state of mind" (*Oster v Kirschner*, supra, 55). While the actual fraud alleged must be stated with particularity, the requisite intent of the alleged perpetrator of the fraud need not be alleged with great

specificity (quotations and citations omitted) (*Chill v. General Electric Co.*, 101 F. 3d 263, 267).

The Plaintiffs have alleged in their Second Amended Complaint that because the National Labor Relation Board had determined that the Jills were employees and not independent contractors in 1995, the NFL and Commissioner Goodell had actual knowledge that the Jills were being misclassified by the Bills as independent contractors (paragraphs 218-219). The Plaintiffs have alleged that Commissioner Goodell was a high level executive with the NFL in 1995 and thereafter when the union was destroyed (paragraph 218). The Complaint alleged that the Bills breached their duty to the Jills by fraudulently misclassifying them as independent contractors, failing to pay them minimum wage and unjustly enriching themselves at the Plaintiffs' expense (paragraph 429). The Complaint also states that the Bills and the NFL had express knowledge of these violations (paragraphs 430 and 431).

The Plaintiffs have alleged that the NFL had personal knowledge of the fraud being perpetrated on them in terms that are not conclusory and are legally sufficient. The fact that these allegations are called into question by the affidavits of Ms. Margolis and Commissioner Goodell is irrelevant at this stage. The affidavits of the defense witnesses are obviously self serving; they are the product of witnesses that represent an entity that, as the Plaintiffs have argued, has a history of lockouts. The Plaintiffs have also pointed out that the NFL receives substantial revenue from the Bills and has an interest to testify on the Bills' behalf. More to the point, this Court finds that the Motion is premature because there are many witnesses with relevant testimony as to what the NFL knew about

the Jills employment status, and when the League knew it, that the Plaintiffs have not yet had the opportunity to depose.

Like the actual knowledge requirement, the element of substantial assistance can be inferred from the circumstances alleged in the Complaint. A Defendant who provides the means by which the perpetrators of a fraud carry out their scheme can be found to have substantially assisted the perpetrators (see *Oster v Kirschner*, supra 55).

The Plaintiffs have alleged in their Second Amended Complaint that the NFL provided substantial assistance to the other Defendants by approving the agreement between the Bills and Citadel to classify the Plaintiffs as independent contractors rather than employees (paragraphs 227-233, 401-436). The Plaintiffs alleged that the NFL provided substantial assistance to the Bills fraudulent wage theft scheme by knowingly providing the means to accomplish it (supra).

As the Plaintiffs have observed, the NFL's recently produced versions of the two agreements it approved between the Bills and Citadel state that the agreements were ineffective without the express written authorizations of Commissioner Goodell. The Plaintiffs have argued that therefore the Jills could not have been misclassified pursuant to the Bills fraudulent scheme without the affirmative assistance of Commissioner Goodell and the NFL.

Courts have held that affirmative approval of contracts containing fraudulent representations can satisfy the substantial assistance requirement (See *Oster v. Kirschner*, supra; *Nathel v Siegel*, 592 F. Supp 2d 452).

Therefore, the Plaintiffs' allegations concerning the NFL's affirmative approval of the two contracts between the Bills and Citadel, which encompass the conduct of the Jills squad, satisfies the substantial assistance requirement.

The NFL has argued that since the Jills were considered independent contractors before and after the periods covered by the two contracts at issue, the Plaintiffs cannot allege that the league proximately caused them to be treated as such. However, the Plaintiffs' allegation is that by approving the contracts, the league ratified the Jills being treated as independent contractors. This Court finds that the contracts were purposefully drawn. There has been no discovery as yet as to the NFL's role in the misclassification of the Jills during the period covered by the two contracts. Nor has there been discovery concerning the league's role in the alleged misclassification of the Jills prior to the commencement of the proposed class period. As to the possible effect of the NFL on the conduct of the Jills under Stejon Productions, the agreements between the Bills and Stejon state that the conduct of the squad must conform to past practices, which would relate to the periods governed by the two agreements approved by the NFL. Therefore, this Court is not persuaded that the case should be dismissed for lack of proximate cause.

This Court further finds that the action is not barred by the statute of limitations. The cause of action can be said to have accrued two years from the time that the fraud was discovered. That two year period began with the disclosure of the two agreements in 2014.

In order to adequately plead a claim for unjust enrichment, the Plaintiff must allege "that (1) the other party was enriched, (2) at that party's expense; and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered" (*Mandarin Trading Ltd. v. Wildenstein*, 16 NY 3d 173, 182).

As the Plaintiffs have pointed out, the NFL is not contesting the last element of the cause of action given the disparity in worth between the Jills cheerleaders and it.

The Plaintiffs have claimed in their Second Amended Complaint that they performed without compensation at many events for all of the Defendants, and that the Defendants profited by their activities (paragraphs 397-399). This Court finds that these allegations satisfy the first two elements of what is required to be plead in a cause of action for unjust enrichment.

The Plaintiffs have cited the work of the Jills in Canada and Mexico and for the NFL's breast cancer awareness campaign in response to the NFL's claim that the Jills did not work specifically for it and that it was not unjustly enriched. The Plaintiffs have also stated that they were featured at times on the NFL TV network and performed at the Canton, Ohio NFL Hall of Fame Bowl game. While the games in Toronto were to some extent an effort to expand the fan base and brand of the Bills, these activities have created at least a question of fact sufficient to deny the NFL's Motion to Dismiss the cause of action alleging unjust enrichment.

The Plaintiffs' response to the league's motion citing their involvement in various league activities is not an illegal amendment to a deficient complaint. The response consists of evidence in support of a complaint which in itself is sufficient as plead. The league's challenge to these activities only emphasizes that there are questions of fact remaining.

The league's alleged role in approving the two contracts is a complete answer to its claim that its involvement in the Jills' activities is too attenuated to sustain a case of action for unjust enrichment.

The NFL has argued that the Plaintiffs were not employees and therefore were not in contractual privity with it. However, it is well established that unjust enrichment may exist without privity between the parties (see *Sperry v Crompton Corp.*, 8 NY 3d 204, 215).

To establish a claim for quantum meruit the Plaintiff must allege (1) the performance of services in good faith; (2) the acceptance of the services by the person to whom they are rendered; (3) an expectation of compensation for the services; and (4) the reasonable value of the services (*Syracuse Community Health Center v State of New York*, 281 AD2d 939). This Court finds that the Complaint contains sufficient allegations to sustain a claim for quantum meruit. (See paragraphs 44-415.)

The NFL contends that the Plaintiff's quantum meruit claim must be dismissed because the work was not done specifically for the NFL. This argument is similar to the one addressed in the cause of action for unjust enrichment and it must similarly fail because of the different activities performed by the Plaintiffs for the NFL; for instance, the NFL's effort to expand the league internationally and its breast cancer awareness campaign.

Generally, the existence of an express contract governing the subject matter of the services performed precludes a claim of quantum meruit (See *Syracuse Community Health Center v State of New York*, supra). However, where circumstances make the enforceability of a contract questionable, an action in quantum meruit may nonetheless be maintained.

The Bills' argument depends on the viability of the agreement classifying the cheerleaders as independent contractors. This Court finds that that classification is

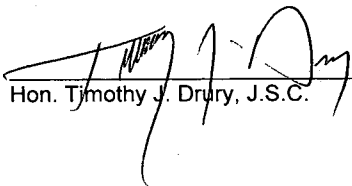
suspect. In response to the Bills' Motion to Dismiss, the Plaintiffs have argued that their reasonable expectations for some compensation should be sufficient to support a cause of action for quantum meruit. This Court believes that this argument may have merit in response to the NFL's Motion to Dismiss the Quantum Meruit cause of action against it.

In any case, given the circumstances outlined above, the Court determines that the NFL's motion is premature without further discovery.

Therefore, the NFL's Motion to Dismiss the Plaintiffs' three causes of action against it is denied in all respects.

SUBMIT ORDER.

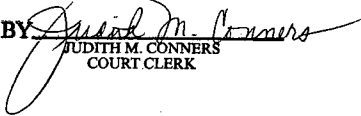
Buffalo, New York
May 5th, 2015



Hon. Timothy J. Drury, J.S.C.

GRANTED

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