SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

Catalogne v. Class Action Recovery, LLC

Catalogne, 2026 NY Slip Op 01029 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2023-09270 · Decided February 25, 2026

SUMMARY

The New York Appellate Division, Second Department, affirmed an order granting the defendants summary judgment dismissing the plaintiff's claims and denying the plaintiff's motion to amend the complaint and for a preliminary injunction. The court held that the alleged oral agreement concerning compensation for procuring business opportunities was unenforceable under the statute of frauds, and that the related unjust enrichment and promissory estoppel claims failed. The court also concluded that the proposed amendments were patently devoid of merit and that the plaintiff could not establish entitlement to a preliminary injunction.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Valerie Brathwaite Nelson, J.; Barry E. Warhit, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	February 25, 2026
DOCKET	2023-09270
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion for summary judgment dismissing the complaint and denying plaintiff's motion for leave to amend the complaint and for a preliminary injunction.
STANDARD OF REVIEW	Summary judgment is proper where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact. Leave to amend is freely granted absent prejudice or surprise unless the proposed amendment is palpably insufficient or patently devoid of merit. A preliminary injunction requires likelihood

	of success on the merits, irreparable injury absent the injunction, and a balance of the equities in the movant's favor.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Edgar Catalogne v. Class Action Recovery, LLC, Richard G. Delgatto

TOPICS

statute of frauds · breach of contract · promissory estoppel · summary judgment · injunctions

PRACTICE AREAS

contracts · civil procedure · equitable remedies · appellate procedure

QUESTIONS PRESENTED

1. Whether the alleged verbal agreement was subject to and unenforceable under General Obligations Law § 5-701(a)(10).
2. Whether plaintiff's unjust-enrichment claim could proceed as a means of circumventing the statute of frauds.
3. Whether plaintiff adequately alleged unconscionable injury to support promissory estoppel based on a promise subject to the statute of frauds.
4. Whether the proposed amended claims were patently devoid of merit because they were premised on the unenforceable verbal agreement.
5. Whether plaintiff was entitled to a preliminary injunction despite the unenforceability of the alleged agreement and the alleged economic injury.

HOLDINGS

1. An agreement to pay compensation for services involving the procurement of introductions to or assistance in negotiating or consummating business opportunities falls within General Obligations Law § 5-701(a)(10) and must be in writing and subscribed by the party to be charged. The alleged verbal agreement was therefore unenforceable.
2. A plaintiff may not maintain an unjust-enrichment claim to circumvent the statute of frauds.
3. When promissory estoppel is asserted to circumvent the statute of frauds, the plaintiff must allege unconscionable injury resulting from reliance on the alleged promise. Plaintiff failed to do so.
4. Leave to amend was properly denied because the proposed additional causes of action were all premised on the unenforceable verbal agreement and were therefore patently devoid of merit.
5. Plaintiff was not entitled to a preliminary injunction because he failed to demonstrate likelihood of success on the merits and alleged only economic loss, which is compensable by money damages and does not constitute irreparable harm.

KEY QUOTATIONS

> *“Pursuant to General Obligations Law § 5-701(a)(10), an agreement 'or some note or memorandum thereof' must be in writing and 'subscribed by the party to be charged therewith,' where the agreement is 'to pay compensation for services rendered in . . . negotiating the purchase, sale, exchange, renting or leasing of . . . a business opportunity, business, its good will, inventory, fixtures or an interest therein.'”* ([*1]-[*2])

> *“A plaintiff may not assert [this] cause of action[ ] to circumvent the Statute of Frauds”* ([*2])

> *“Leave to amend a pleading shall be freely given absent prejudice or surprise resulting directly from the delay unless the proposed amendment is palpably insufficient or patently devoid of merit”* ([*2])

> *“To establish the right to a preliminary injunction, a movant must demonstrate (1) the likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) that the equities balance in the movant's favor”* ([*2])

FACTUAL BACKGROUND

Plaintiff alleged that Richard G. Delgatto, owner of Class Action Recovery, LLC, entered into a verbal agreement under which plaintiff would serve as chief operating officer for a salary, equity, contingency fees, and commissions in exchange in part for procuring and securing clients for Class Action. The agreement was not memorialized in a writing subscribed by the parties to be charged. Plaintiff sought damages and later proposed claims for quantum meruit, breach of fiduciary duty, constructive trust, accounting, declaratory relief, and appointment of a temporary receiver.

PROCEDURAL HISTORY

Plaintiff commenced an action asserting breach-of-contract, unjust-enrichment, and promissory-estoppel causes of action based on an alleged verbal employment and compensation agreement. Defendants asserted, among other defenses, the statute of frauds. Supreme Court, Westchester County, granted defendants' motion for summary judgment and denied plaintiff's motion for leave to amend and for a preliminary injunction. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Best Global Alternative, Ltd. v. FCIC Constr. Servs., Inc., 170 A.D.3d 1101, 1102-1103 (N.Y. App. Div. 2019)
- Hopwood v. Infinity Contr. Servs. Corp., 230 A.D.3d 570, 570-571 (N.Y. App. Div. 2024)
- Landa v. McGuire, 223 A.D.3d 795, 797 (N.Y. App. Div. 2024)
- Strauss v. Fleet Mtge. Corp., 282 A.D.2d 736, 737 (N.Y. App. Div. 2001)
- Matter of Zelouf, 183 A.D.3d 900, 902 (N.Y. App. Div. 2020)
- Bent v. St. John's Univ., N.Y., 189 A.D.3d 973, 975-976 (N.Y. App. Div. 2020)
- Martin Greenfield Clothiers, Ltd. v. Brooks Bros. Group, Inc., 175 A.D.3d 636, 638 (N.Y. App. Div. 2019)

- Kyung Hee Moon v. Owadeyah, 223 A.D.3d 793, 794 (N.Y. App. Div. 2024)
- Ruland v. Leibowitz, 209 A.D.3d 1051, 1052 (N.Y. App. Div. 2022)
- Miller v. 6 Sterling Dr. Trust, 231 A.D.3d 1020, 1021 (N.Y. App. Div. 2024)
- Cushing v. Sanford Equities Corp., 223 A.D.3d 870, 871 (N.Y. App. Div. 2024)
- Matter of Rice, 105 A.D.3d 962, 963-964 (N.Y. App. Div. 2013)
- Di Fabio v. Omnipoint Communications, Inc., 66 A.D.3d 635, 637 (N.Y. App. Div. 2009)

OPINION

Catalogne v. Class Action Recovery, LLC 2026 NY Slip Op 01029

PER CURIAM.

Catalogne v Class Action Recovery, LLC (2026 NY Slip Op 01029) Catalogne v Class Action Recovery, LLC 2026 NY Slip Op 01029 Decided on February 25, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 25, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

VALERIE BRATHWAITE NELSON

BARRY E. WARHIT

LAURENCE L. LOVE, JJ. 2023-09270

(Index No. 61209/22) [*1]Edgar Catalogne, appellant, v Class Action Recovery, LLC, etc., et al., respondents. Scarinci Hollenbeck, LLC, New York, NY (James Malachy Meaney and Christopher D. Warren of counsel), for appellant. Maker, Fragale & Di Costanzo, LLP, Rye, NY (Costantino Fragale of counsel), for respondents. DECISION & ORDER In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Westchester County (Hal B. Greenwald, J.), dated August 25, 2023. The order granted the defendants' motion for summary judgment dismissing the complaint and denied the plaintiff's motion for leave to amend the complaint and for a preliminary injunction. ORDERED that the order is affirmed, with costs. The plaintiff commenced this action asserting causes of action alleging breach of contract, unjust enrichment, and promissory estoppel. The complaint alleged that the defendant Richard G. Delgatto, the owner of the defendant Class Action Recovery, LLC (hereinafter Class Action), entered into a verbal agreement in which the plaintiff agreed to work for Class Action as Class Action's chief operating officer for a salary, in addition to equity in Class Action, as well as contingency and commission fees, essentially in consideration for the plaintiff's assistance in procuring and securing clients for Class Action. The defendants joined issue, asserting affirmative defenses, including the statute of frauds. In January 2023, the plaintiff moved for leave to amend the complaint and for a preliminary injunction. The proposed amended complaint contained additional causes of action sounding in quantum meruit and breach of fiduciary duty and further sought the imposition of a constructive trust, an accounting, declaratory relief, and the appointment of a temporary receiver. The defendants opposed the plaintiff's motion. In March 2023, the defendants moved for summary judgment dismissing the complaint on the grounds that the causes of action were barred by the statute of frauds and the promissory estoppel cause of action lacked any allegations of an unconscionable injury. In an order dated August 25, 2023, the Supreme Court granted the defendants' motion and denied the plaintiff's motion. The plaintiff appeals. "Pursuant to General Obligations Law § 5-701(a)(10), an agreement 'or some note or memorandum thereof' must be in writing and 'subscribed by the party to be charged therewith,' where the agreement is 'to pay compensation for services rendered in . . . negotiating the purchase, sale, exchange, renting or leasing of . . . a business opportunity, business, its good will, inventory, [*2]fixtures or an interest therein.' The statute defines 'negotiating' to include the act of 'procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction'" (Best Global Alternative, Ltd. v FCIC Constr. Servs., Inc. , 170 AD3d 1101 , 1102, quoting General Obligations Law § 5-701[a][10]; see Hopwood v Infinity Contr. Servs. Corp. , 230 AD3d 570 , 570-571). Here, the defendants established, prima facie, that the purported verbal agreement was for the negotiation of business opportunities. Accordingly, the agreement was required to be in writing and subscribed by the parties to be charged (see General Obligations Law § 5-701[a][10]; Hopwood v Infinity Contr. Servs. Corp. , 230 AD3d at 571; Best Global Alternative, Ltd, v FCIC Constr. Servs., Inc. , 170 AD3d at 1102). The agreement herein failed to comply with these requirements (see General Obligations Law § 5-701[a][10]; Landa v McGuire , 223 AD3d 795 , 797). In opposition, the plaintiff failed to raise a triable issue of fact (see Best Global Alternative, Ltd, v FCIC Constr. Servs., Inc. , 170 AD3d at 1103). Accordingly, the Supreme Court properly granted that branch of the defendants' motion which was for summary judgment dismissing the cause of action alleging breach of contract. Similarly, the Supreme Court properly granted that branch of the defendants' motion which was for summary judgment dismissing the cause of action alleging unjust enrichment, as "[a] plaintiff may not assert [this] cause of action[ ] to circumvent the Statute of Frauds" (Strauss v Fleet Mtge. Corp. , 282 AD2d 736, 737 ; see Matter of Zelouf , 183 AD3d 900, 902). Further, the Supreme Court properly granted that branch of the defendants' motion which was for summary judgment dismissing the promissory estoppel cause of action. Insofar as this cause of action was asserted to circumvent the statute of frauds, the plaintiff was required, but failed, to allege that he suffered unconscionable injury in reliance on the defendants' alleged promise (see Bent v St. John's Univ., N.Y. , 189 AD3d 973, 975-976 ; Martin Greenfield Clothiers, Ltd. v Brooks Bros. Group, Inc. , 175 AD3d 636 , 638). The Supreme Court also properly denied that branch of the plaintiff's motion which was for leave to amend the complaint. "'Leave to amend a pleading shall be freely given absent prejudice or surprise resulting directly from the delay unless the proposed amendment is palpably insufficient or patently devoid of merit'" (Kyung Hee Moon v Owadeyah , 223 AD3d 793 , 794 quoting Ruland v Leibowitz , 209 AD3d 1051, 1052 ; see CPLR 3025[b]). The additional causes of action in the proposed amended complaint were all premised, in effect, on the purported verbal agreement, which is void pursuant to the statute of frauds; therefore, the court properly determined that those causes of action were patently devoid of merit. In addition, the Supreme Court properly denied that branch of the plaintiff's motion which was for a preliminary injunction. "To establish the right to a preliminary injunction, a movant must demonstrate (1) the likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) that the equities balance in the movant's favor" (Miller v 6 Sterling Dr. Trust , 231 AD3d 1020 , 1021; see Cushing v Sanford Equitites Corp. , 223 AD3d 870 , 871). Here, the purported verbal agreement was unenforceable, and thus, the plaintiff failed to show a likelihood of success on the merits. Further, the plaintiff has only alleged economic loss, which is compensable by money damages and does not constitute irreparable harm (see Matter of Rice , 105 AD3d 962 , 964; Di Fabio v Omnipoint Communications, Inc. , 66 AD3d 635 , 637). Accordingly, the court properly denied that branch of the plaintiff's motion which was for a preliminary injunction (see Matter of Rice , 105 AD3d at 963). DILLON, J.P., BRATHWAITE NELSON, WARHIT and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court